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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-1562

UNITED STATES STEEL CORPORATION,
Plaintiff-Petitioner,

v.

UNITED MINE WORKERS OF AMERICA, DISTRICT 20, UNITED MINE WORKERS OF AMERICA, and LOCAL 8982, UNITED MINE WORKERS OF AMERICA,
Defendants-Respondents.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Fifth Circuit

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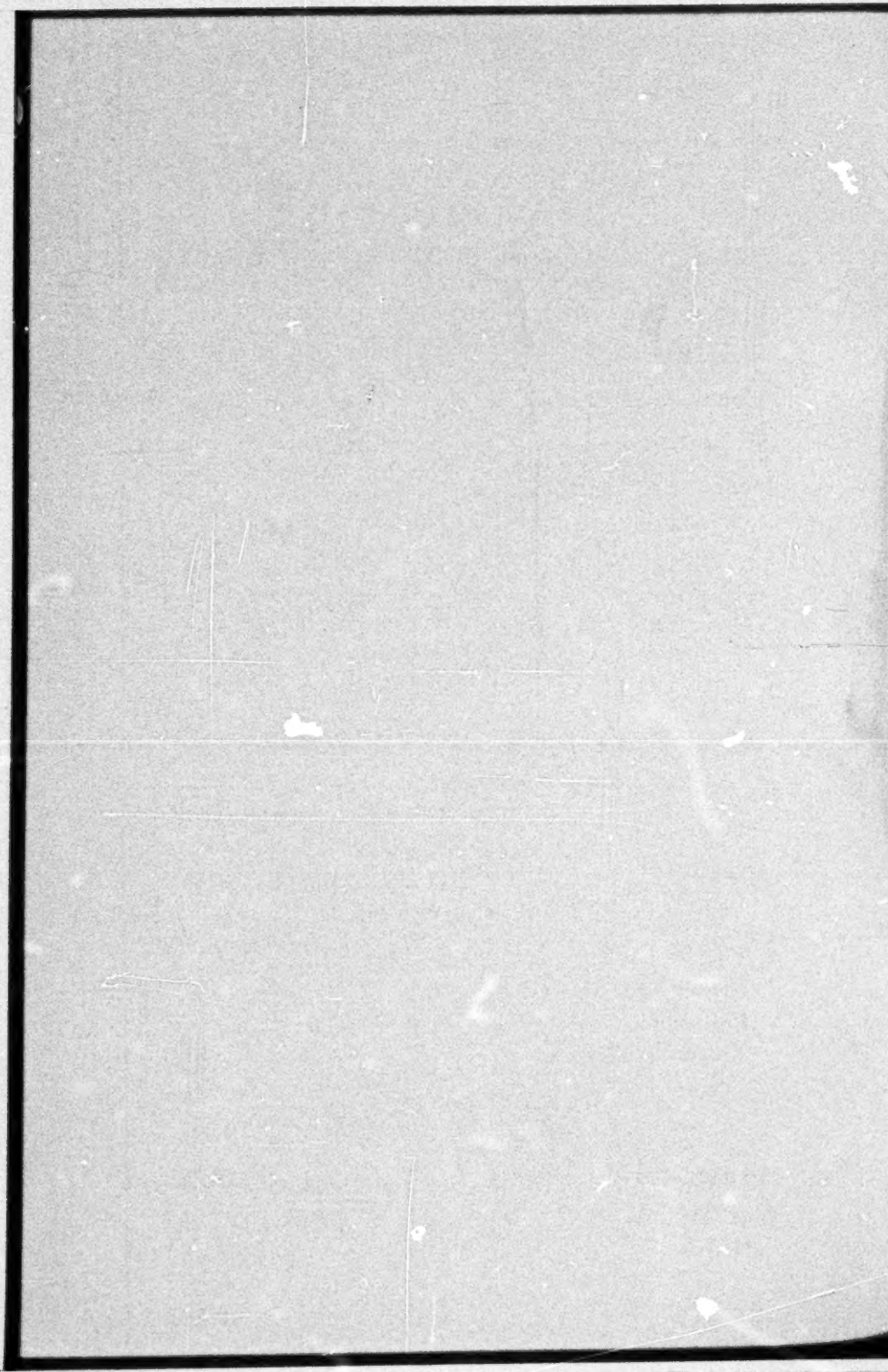

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TABLE OF CONTENTS

	Page
Opinions Below	1
Jurisdiction	2
Statutes Involved	3
Statement of the Case	4
Reasons for Granting the Writ	9
1. The decision below conflicts with the decisions of other courts of appeals	9
2. The legal propositions relied on in the decision below as support for its conclusion on the question presented, are themselves federal questions which conflict with applicable decisions of this court	10
3. The question presented is an important federal question which should be passed on by this honorable court	13
Conclusion	14
Appendix:	
Opinion of U.S. District Court Dated May 30, 1974	A-1
Opinion of U.S. District Court Dated June 17, 1974	A-12
Opinion of U.S. Court of Appeals for the Fifth Circuit	A-29
Petition for Rehearing and Petition for Rehearing En Banc	A-51-52

Table of Cases Cited

Atkinson v. Sinclair Refining Co., 370 U.S. 254, 258 (1962)	13
Boys Markets v. Retail Clerks Union, 398 U. S. 235 (1970)	6, 9, 10, 12, 13, 14

GH POOR COPY

C. F. & I. Coal Co. v. United Mine Workers, 507 F.2d 170 (10th Cir., 1974) 9

Firestone Tire & Rubber Co. v. Rubber Workers, 476 F. 2d 603 (5th Cir., 1973) 13

Gateway Coal Co. v. UMW, 414 U. S. 368 (1974) 12, 13

Longshoremen v. Philadelphia Marine Trade Ass'n, 389 U. S. 64, 75 (1967) 13

New Orleans Steamship Ass'n v. Longshoremen, 289 F.2d 369 (5th Cir., 1968) 13

NLRB v. Express Publishing Co., 312 U.S. 426, 436-437 (1941) 13

Old Ben Coal Co. v. United Mine Workers, 500 F. 2d 950 (7th Cir., 1974) 9

Operating Engineers v. Flair Builders, 406 U. S. 487, 491 (1972) 6, 10

Regal Knitwear Co. v. NLRB, 324 U. S. 9, 13-15 (1945) 13

Steelworkers v. American Mfg. Co., 363 U.S. 564, 571 (1960) (Brennan and Harlan, J. J., concurring) 11

United States Steel Corp. v. United Mine Workers, — F. 2d —, 78 LC ¶ 11,347 (3d Cir., March 16, 1976) ..9, 11, 12

William E. Arnold Co. v. Carpenters District Council, 417 U. S. 12, 18 (1974) 12

Miscellaneous Cited

Labor-Management Relations Act, § 301, 29 U.S.C.A. § 185 Suits by and Against Labor Organizations 3, 8, 12

Norris-LaGuardia Act, § 9, 29 U.S.C.A. § 109 .....3, 12

28 U.S.C.A. § 1254(1) 2

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UNITED STATES STEEL CORPORATION,
Plaintiff-Petitioner,

v.

UNITED MINE WORKERS OF AMERICA, DISTRICT 20, UNITED MINE WORKERS OF AMERICA, and LOCAL 8982, UNITED MINE WORKERS OF AMERICA,
Defendants-Respondents.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Fifth Circuit

The petitioner, United States Steel Corporation, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above cause on September 24, 1975.

OPINIONS BELOW

The opinion of the District Court granting a preliminary injunction is reported at 88 LRRM 3381 and is set forth at A-1, infra. The opinion of the District Court adjudicating defendants

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in civil contempt is reported at 383 F. Supp. 1082, and is set forth herein at A-12, infra. The opinion of the Court of Appeals reversing both judgments of the District Court is reported at 519 F. 2d 1236 and is set forth herein at A-27, infra. The opinion of the Court of Appeals denying the petition for rehearing is reported at 526 F. 2d 376 and is set forth herein at A-51, infra.

JURISDICTION

The judgment of the Court of Appeals was entered on September 24, 1975. A timely petition for rehearing was denied on January 26, 1976, and this petition was filed within 90 days after that date. This Court's jurisdiction is invoked under 28 U.S.C.A. § 1254(1).

QUESTION PRESENTED

A collective bargaining agreement between petitioner, an employer in an industry affecting interstate commerce, and United Mine Workers of America, covering employees at Concord Mine, provided for mandatory terminal arbitration, after compliance by the union or an aggrieved employee with preliminary steps of the grievance procedure, of "differences . . . as to the meaning and application of the provisions of this agreement, or . . . differences . . . about matters not specifically mentioned in this agreement, or . . . local trouble of any kind". Notwithstanding this language, there was a long series of strikes over a variety of such matters at Concord Mine during the term of the agreement. After the seventh such strike in violation of this current labor agreement and a threat of resumption of the latest one, the District Court issued a preliminary injunction enjoining all such strikes for the duration of the labor agreement. The question presented is whether the District Court has discretion in such circumstances, to issue such a prospective injunction.

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STATUTES INVOLVED

The statutes involved herein are § 301 of the Labor-Management Relations Act, 29 U.S.C.A. § 185, and § 9 of the Norris-LaGuardia Act, 29 U.S.C.A. § 109, which provide as follows:

Norris-LaGuardia Act, § 9, 29 U.S.C.A. § 109

§ 109. Granting of restraining order or injunction as dependent on previous findings of fact; limitation on prohibitions included in restraining orders and injunctions.

No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided in this chapter.

Labor-Management Relations Act, § 301, 29 U.S.C.A. § 185
Suits by and Against Labor Organizations

SEC. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

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(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) For the purposes of this section in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

STATEMENT OF THE CASE

Petitioner, United States Steel Corporation, operates an underground coal mine in Alabama known as the Concord Mine. The 800 miners at Concord are covered by a contract with United Mine Workers of America, which is the standard form

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of contract known as the National Bituminous Coal Wage Agreement of 1971. This contract was entered into on November 12, 1971, and contains a grievance procedure with mandatory terminal arbitration applicable to all disputes raised by the union or any employee over all "differences . . . as to the meaning and application of the provisions of this agreement, or . . . differences . . . about matters not specifically mentioned in this agreement, or . . . local trouble of any kind."

During the term of the 1971 contract, up until the issuance of the preliminary injunction in question, there were seven strikes at Concord Mine:

	Date Begun	Hours Duration	TRO Obtained	Cause
1.	3/24/72	72	No	Death of employee in mine accident.
2.	12/19/72	24	Yes	Employee's qualifications for a vacancy.
3.	3/8/73	24	No	Death of employee in mine accident.
4.	3/12/73	32	Yes	Provision of light work for employee with back strain.
5.	11/13/73	24	Yes	Dispute over adequacy of rag supply.
6.	4/12/74	24	No	Miner's death from natural causes.
7.	5/9/74	64	Yes	Claim of seniority transfer rights to newly opened mine at Oak Grove.

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The District Court found, and the Court of Appeals did not question this finding, that all of these strikes were over matters covered by the broad grievance and arbitration clause.[1]

The District Court further found, and it is not gainsaid by the Court of Appeals' decision, that (A-8, infra):

> "This series of strikes over matters covered by the grievance and arbitration clause establish a pattern of conduct which creates a reasonable apprehension that such strikes will be resumed and continue unless effective injunctive relief is granted. In addition, the Court finds that a strong suggestion, if not more aptly characterized a threat, was made to plaintiff by a member of the Executive Committee of the International Union, on May 14, 1974, that unless plaintiff made concessions to the defendants in the matter of manning the Oak Grove Mine, further work stoppage would be likely to occur; this in-

[1] The strike of June 15-17, 1974, protesting the importation of South African coal occurred *after* the preliminary injunction in question was issued. Its objects, or the arbitrability of such a dispute, relate to the contempt adjudication only, not the propriety of the preliminary injunction, and therefore, have nothing to do with the question presented herein, the propriety of a preliminary injunction against future strikes over arbitrable matters. The Court of Appeals curiously held that "it is beyond belief" that the contract language about differences as to the meaning and application of the provisions of the contract, differences about matters not specifically mentioned in the contract, or local trouble of any kind, could apply to trouble over importation of South African coal (A-47-48, infra), yet that the identical language of the preliminary injunction did so apply (A-48, footnote 24, infra). The Court of Appeals opinion that appears inconsistent and to confuse the goals of the subsequent June 15 strike with the propriety of a prospective Boys Markets injunction, and to assume rather naively that a political strike is so far removed from legitimate interests of Concord employees that the strike issue cannot conceivably be arbitrable, yet still constitute a labor dispute protected from injunction by the Norris-La Guardia Act. This Court held in *Operating Engineers v. Flair Builders*, 406 U. S. 487, 491 (1972) that an agreement to arbitrate "any difference" plainly meant that any and all disputes whatsoever are arbitrable. But in any event, the South African coal strike cannot have a bearing on the propriety of the antecedent preliminary injunction.

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dicating that the defendants have not relinquished economic force rather than arbitration as a means of resolving such differences."

The District Court also made detailed findings of fact relative to the substantial and irreparable injury to petitioner, for which the legal remedy is inadequate, the critical need for metallurgical coal, and the nationwide fuel shortage. It concluded that "based upon the prior practice and pattern of strikes on the part of the union, and the previous disobedience of the temporary restraining order issued by this Court, that the only way to avoid irreparable injury to the employer in this case is to issue a prospective injunction." (A-7, infra). The District Court prospectively enjoined the defendant unions as follows:

". . . during the pendency of this civil action until midnight, November 11, 1974, or until further order of this Court from engaging in any strike or work stoppage at plaintiff's Concord Mine, or enlarging or extending any strike or work stoppage at Concord Mine, or enlarging or extending any strike or work stoppage at Concord Mine to Oak Grove Mine over any disagreement about the interpretation or application of the collective bargaining agreement between the parties or any disagreement over any matter not mentioned in said agreement, or over local trouble of any kind, and from inducing or encouraging any of plaintiff's employees to engage in such a strike or work stoppage by word of mouth, sign, signal, vote, advice or device of any kind, or in any other manner interfering with the business of plaintiffs as a means of settling any such disagreement in a manner other than set out in the collective bargaining agreement, provided that as a condition to the issuance of this preliminary injunction plaintiff is enjoined when requested by the defendants to handle any such dispute or disagreement under the griev-

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ance and arbitration provisions of the collective bargaining agreement. Provided, further, that the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees will not be deemed a strike under this preliminary injunction."

The jurisdiction of the District Court herein was based on §301 of the Labor-Management Relations Act, 29 U.S.C.A. §185.

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REASONS FOR GRANTING THE WRIT

1. The Decision Below Conflicts With the Decisions of Other Courts of Appeals.

All the other Courts of Appeals which have considered the question have held that an injunction against future strikes over arbitrable issues is proper, in the sound discretion of the District Court, where there has been a series of such strikes creating a reasonable apprehension that they are likely to recur. *Old Ben Coal Co. v. United Mine Workers,* 500 F. 2d 950 (7th Cir., 1974); *C. F. & I. Coal Co. v. United Mine Workers,* 507 F. 2d 170 (10th Cir., 1974); *United States Steel Corp. v. United Mine Workers,* — F. 2d —, 78 LC ¶ 11,347 (3d Cir., March 16, 1976).

These Circuits may differ at least verbally as to the appropriate formula, but all are in clear disagreement with the Fifth Circuit's view that in this type of case a Federal Court can only prevent wrongs that have already been committed and can enjoin strikes in violation of arbitration clauses only one at a time. In *Old Ben,* the Seventh Circuit held that in appropriate cases, it was a proper exercise of discretion to frame a prospective *Boys Markets* injunction in the language of the standard UMW contract, as the District Court did in this case. In the *C. F. & I.* case, the Tenth Circuit categorized the series of past strikes in violation of contract as those categories of strikes over employee suspensions, discharges, or work assignments, and held that an injunction against striking over future disputes falling in those categories, was proper. The Third Circuit, espousing a search for a golden mean, said a prospective *Boys Markets* injunction was proper but should enjoin only strikes over those categories of arbitrable disputes that had previously occurred, and enjoin only those defendants as to which it finds there is a likelihood of recurrence of striking over such disputes.[2]

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[2] The concurring opinion of Judge Rosenn in the Third Circuit says: "I do not read Judge Gibbons' opinion as denying the power

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In short, all those Circuits approve, in appropriate cases, *Boys Markets* injunctions against future strikes over arbitrable disputes: The Seventh Circuit against all such strikes; the Tenth Circuit against strikes over arbitrable disputes falling in subject matter categories over which there have been previous strikes; and the Third Circuit adding to the Tenth Circuit limitation, a further limitation that the injunction apply only to defendants found to be strike-prone or likely to strike again over such categories. The conflict between the Circuits is evident.

2. **The Legal Propositions Relied on in the Decision Below as Support for Its Conclusion on the Question Presented, Are Themselves Federal Questions Which Conflict With Applicable Decisions of This Court.**

The Court below relied primarily on three propositions of Federal law (A-40, infra):

> "(1) *Boys Markets* contemplates a finding in each case that the strike was over an arbitrable issue as a condition precedent to issuance of an injunction. (2) The injunction violated §9 of the Norris-LaGuardia Act. (3) The injunction violated F. R. of Civ. P. 65(d)."

Each of these propositions, as applied in the decision below, are in conflict not only with the decisions of other Circuits, but also with the fair import of this Court's decisions.

As for (1), this Court held in *Operating Engineers v. Flair Builders*, 406 U.S. 487, 491 (1972), that a Court faced with an

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of a district court to issue an injunction framed in the language of the arbitration clause of a collective bargaining agreement, broadly prohibiting strikes over any arbitrable grievance, where the facts before the court justify such an injunction." He cites as an example of such a state of facts, "Where a union has engaged in numerous wildcat strikes over arbitrable grievances of such a wide variety that they cannot be effectively categorized. . . ." Such a state of facts appears to us to be present here; surely the District Court could so find.

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arbitration clause applying to "any difference", with "nothing to limit the sweep of this language or to except any dispute or class of disputes from arbitration . . . must conclude that the parties meant what they said—that 'any difference' . . . should be referred to the arbitrator for decision." This Court held that this is the "plain meaning" of such a clause which cannot be ignored; that under it, all differences are arbitrable whether intrinsic or extrinsic to the contract. See also *Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 571 (1960) (Brennan and Harlan, J. J., concurring), where it was said with respect to broad arbitration clauses applying to any dispute, once it has found that such a clause was agreed to, "the Court will have exhausted its function, except to order the reluctant party to arbitration." Therefore, once it has been judicially determined that the arbitration clause is of this broad species, that determination is res judicata for the term of the contract and no further determination of arbitrability would be necessary or appropriate to enjoin a subsequent strike over "any dispute" during the contract; the question could not be relitigated and the Court's only function would be to order arbitration and to grant appropriate sanctions as to the strike. There would be no occasion, where such a clause was agreed to, repeatedly to find that a particular dispute was arbitrable because an initial adjudication that all differences made the subject of employee complaint are arbitrable, exhausts that subject and no party thereafter can relitigate it collaterally. *Boys Markets*, 398 U. S. 235, 254, contains no requirement of relitigating arbitrability separately in every case; all it says is that the District Court may issue no injunctive order until it first holds the strike is over an arbitrable dispute, which condition would necessarily be met in any situation where it has been previously adjudicated that all differences are arbitrable. As pointed out in *United States Steel Corp. v. UMW*, — F. 2d —, 78 LC ¶11,347 (3d Cir., 1976):

> "The Court that has once determined in an adversary proceeding the meaning of a contract must have the power

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> to protect the parties and itself from the necessity or burden of repeatedly adjudicating what may often be the identical issue."

As for (2), the Third Circuit held in *United States Steel Corporation v. United Mine Workers*, — F. 2d —, 78 LC ¶11,347 (March 16, 1976):

> "If the plaintiff in a §301 suit pleads and proves that the defendant, whether labor organization or employer, is engaging in a pattern of conduct which results in repeated and similar violations, nothing in §9 of the Norris-LaGuardia Act, as we read it, prevents an injunction directed at such a course of conduct."

We submit that not only is this entirely correct, but that prior decisions of this Court recognize this. What other reasonable meaning can be ascribed to this express requirement in *Boys Markets v. Retail Clerks Union*, 398 U. S. 235 (1970).

> "Beyond this, the District Court *must, of course*, consider . . . whether *breaches* are occurring and *will* continue, or have been threatened and *will* be committed; whether they have caused or *will cause* irreparable injury. . . ." [Emphasis added.]

Why should it, of course, make any particular difference whether future breaches will be committed if there is nothing the District Court can do about them? It sounds to us as though the accommodation struck in *Boys' Markets* between Taft-Hartley §301 and Norris-LaGuardia §9 clearly recognized the propriety of prospective injunctions in appropriate cases. The same observations are borne out by *Gateway Coal Co. v. UMW*, 414 U. S. 368 (1974), and *William E. Arnold Co. v. Carpenters District Council*, 417 U. S. 12, 18 (1974), emphasizing that "the assurance of swift and *effective* relief provides incentive to eschew economic weapons in favor of binding grievance procedures and no-strike clauses."

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As for (3), it is plain from the decisions of this Court that Rule 65(d) does not preclude issuance of a prospective injunction. *NLRB v. Express Publishing Co.*, 312 U.S. 426, 436-437 (1941); *Regal Knitwear Co. v. NLRB*, 324 U. S. 9, 13-15 (1945); *Longshoremen v. Philadelphia Marine Trade Ass'n*, 389 U. S. 64, 75 (1967).

As a further make-weight argument (A-48, infra), the Fifth Circuit advises petitioner it has an adequate remedy in initiating a grievance itself, obtaining an arbitration award containing prospective injunctive relief, and then obtaining judicial enforcement of the award, as was done in *New Orleans Steamship Ass'n v. Longshoremen*, 289 F. 2d 369 (5th Cir., 1968). However, inasmuch as the grievance procedure in the UMW contract is employee and union grievance oriented, this advice disregards and is contrary to the law well-established by the decisions of this Court, compare *Atkinson v. Sinclair Refining Co.*, 370 U.S. 254, 258 (1962), as well as its own decisions to the contrary. *Firestone Tire & Rubber Co. v. Rubber Workers*, 476 F. 2d 603 (5th Cir., 1973).

3. **The Question Presented Is an Important Federal Question Which Should Be Passed on by This Honorable Court.**

As this court recognized in *Gateway Coal Company*, the union movement has come of age and no longer needs to be coddled by permissiveness and free rein to evade and disregard its obligation in collective contracts to settle its disputes exclusively through arbitration. With maturity must come a degree of real responsibility, and if all *Boys Markets* affords is stopping strikes one by one, leaving the union free to start a new strike every day or continue the old strike so long as it assigns a new reason, then the injunctive relief available under *Boys Markets* is not much more than a delusion.

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At stake is whether we can have any effective system of peacefully settling all disputes during a contract, or will sink into the nigh total loss of industrial discipline which now obtains in Great Britain, which has largely resulted from the government's inability or unwillingness to control strikes in violation of contract. Means must be devised to give the union effective deterrents and incentives to cause it to assert control and discipline, which are largely lacking if strikes can recur as fast as Courts can crank out ephemeral injunctions, good for this strike only. In short, the decision below makes a farce out of *Boys Markets*, threatens the arbitration keystone to our system of industrial self-government, and jeopardizes the health if not survival of the free economy for no practical good whatever.

The case is of immense national importance and cries out for review by this Court.

CONCLUSION

For the foregoing reasons, it is respectfully requested that this Court issue a writ of Certiorari to revise the decision below.

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APPENDIX

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U.S. Steel Corp. v. UMW

U.S. District Court,
Northern District of Alabama

United States Steel Corporation v. United Mine Workers of America, et al., No. 73-G-1075-S, May 30, 1974.

* * * * * * * *

Full Text of Opinion

Guin, District Judge:—This cause duly came on to be heard at 1:00 P.M. on May 17, 1974 before the undersigned on the plaintiff's verified application for preliminary injunction contained in its original complaint; and upon the verified motion for further preliminary injunctive relief contained in plaintiff's motion filed on May 9, 1974, which motion the court treats as an amendment to the complaint. The plaintiff appeared by its attorneys M. L. Taliaferro and C. V. Stelzenmuller; and defendants by their attorneys Jack Drake and William E. Mitch. The Court having considered the verified complaint and the verified motion, the answer and oral testimony offered at the hearing, documentary evidence and argument of counsel, is of the opinion that the plaintiff is entitled to the preliminary injunctive relief herein granted and makes the following:

Findings of Fact

1. Plaintiff, United States Steel Corporation, is a corporation organized and existing under the laws of the State of Delaware, and is duly qualified and authorized to do business in the State of Alabama. Plaintiff owns and operates a coal mine known as Concord Mine in Jefferson County and owns and operates other plants and industrial facilities in Jefferson County, Alabama and

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in other states in which it is engaged in the production of steel, coke, chemicals and other products. Plaintiff also owns and is in the process of commencing production at a coal mine in Jefferson County, Alabama approximately 5 miles away from Concord Mine, which is known as the Oak Grove Mine. At its Concord Mine plaintiff employs over 800 persons, and at other industrial plants and facilities in Jefferson County, it employs many thousands of employees, and in its said operations in Jefferson County, Alabama plaintiff ships over $50,000 annually of goods to customers located outside the State of Alabama.

2. Defendant, United Mine Workers of America, is an unincorporated labor association having its principal office at 900 15th Street, N.W., Washington, D.C. Its duly authorized officers or agents, locals or branches, are engaged in representing or acting for employee members within this jurisdiction.

3. Defendant District 20 United Mine Workers of America, is an unincorporated labor organization and is an administrative division of the United Mine Workers of America, having an office in the City Federal Building at Second Avenue and 21st Street, North, in the City of Birmingham, Alabama and is engaged in representing or acting for employee members of the United Mine Workers employed at plaintiff's Concord Mine located within this judicial district.

4. Defendant United Mine Workers of America Local No. 8982, is an unincorporated labor association and is affiliated with the aforesaid defendant United Mine Workers of America, and said District 20, United Mine Workers of America. Said Local has a mailing address of Bessemer Labor Temple, 1111 North 19th Street, Bessemer, Alabama. Said Local is engaged in representing or acting for the members of the defendant United Mine Workers of America employed at plaintiff's Concord Mine located within this judicial district.

5. The plaintiff and each of defendants are parties signatory to and are bound by a collective bargaining agreement entered

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into between the plaintiff and the United Mine Workers of America, known and entitled "National Bituminous Coal Wage Agreement of 1971," hereinafter referred to as the collective bargaining agreement.

6. For many years defendant United Mine Workers of America has been the exclusive collective bargaining representative of certain non-supervisory employees at plaintiff's Concord Mine for the purpose of collective bargaining over wages, hours and working conditions and for many years there have been in effect collective bargaining agreements between the defendant United Mine Workers of America and plaintiff covering approximately 767 persons employed by plaintiff at its Concord Mine. The collective bargaining agreement presently in effect and covering said employees at the Concord Mine became effective on November 12, 1971 and by its terms will continue in full force and effect until November 12, 1974, and is not subject to termination by any party to said collective bargaining agreement prior to November 12, 1974.

7. Said collective bargaining agreement dated November 12, 1971, contains a mandatory and detailed grievance and arbitration procedure for the settlement of grievances and disputes, which reads as follows:

Should differences arise between the Mine Workers and the Employer as to the meaning and application of the provisions of this Agreement, or should differences arise about matters not specifically mentioned in this Agreement, or should any local trouble of any kind arise at the mine, an earnest effort shall be made to settle such differences at the earliest possible time . . .:

> 1. By the aggrieved party and his foreman who shall have the authority to settle the complaint. Any grievance which is not filed by the aggrieved party within fifteen calendar days after he reasonably should have known of such grievance shall be considered invalid and not subject to further prosecution under the grievance machinery.

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2. If no agreement is reached, the grievance shall be taken up by the Mine Committee and mine management within five calendar days of the conclusion of Step 1. A standard grievance form shall be completed and jointly signed by the parties to the grievance. Such a form will be agreed upon by the parties.

3. If no agreement is reached, the grievance shall be taken up by the UMW District Representative and a designated representative of the Employer within ten calendar days of the conclusion of Step 2.

4. If no agreement is reached, the grievance shall be taken up by the Board within ten calendar days of the conclusion of Step 3, or in discharge cases, within five calendar days of notice of appeal. The Board shall consist of four members, two of whom shall be designated by the Union and two by the Employer. Neither the Union's representatives on the Board nor the Employer's representatives on the Board shall be the same persons who participated in Steps 1, 2, or 3 of this procedure.

5. Should the Board fail to agree the matter shall, within ten (10) calendar days after decision by the Board, be referred to an umpire who shall expeditiously and without delay decide said case. The decision of the umpire shall be final. Expenses and fees incident to the services of an umpire shall be paid equally by the Employer or Employers affected and by the Union.

A grievant shall have the right to be present at each step, if he so desires, of the foregoing procedures until such time as all evidence is taken.

A decision reached at any stage prior to Step 5 of the proceedings above outlined shall be reduced to writing and signed by both parties. The decision shall be binding on both parties hereto and shall not be subject to reopening except by mutual agreement.

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8. At approximately 12:00 midnight on the 12th day of November, 1973, the defendants began a work stoppage at the Concord Mine. The grievance or complaint over which this work stoppage occurred was that rags were not furnished by plaintiff to some parts of the mine and that this constituted a safety hazard. The plaintiff requested the workers to go to work and said there would be plenty of rags in ample supply were placed in ees refused to go to work and left the mine. The defendants were promptly notified that shortly after midnight rags in ample supply were placed in the mines. After such notification, however, employees scheduled to work on the 8 o'clock shift failed to report. On the midnight shift at midnight on November 12, 50 men did report and 150 scheduled to report failed to report. At 8 o'clock A.M. on November 13 ample rags were available and 4 out of 10 sections were working and 6 remained closed.

9. As shown by the records of this Court, a Temporary Restraining Order was issued restraining the continuation of said strike at 5:43 P.M. on November 13, 1973. Defendant's counsel was immediately notified thereof and copy of the Temporary Restraining Order was promptly served on defendants. This work stoppage ended on the following midnight having lasted 24 hours.

10. The Temporary Restraining Order issued on November 13, 1973 has been duly extended from time to time and has remained in effect continually every since. Nevertheless there have been two further work stoppages which have closed down the Concord Mine. On April 12, 1974 there was a work stoppage which lasted 24 hours. The occasion for the work stoppage was that an employee at Concord Mine who had become sick at work died while being taken to the hospital. An autopsy showed that he died of natural causes having nothing to do with his employment. On May 9, 1974 at 8:00 A.M. all the underground employees of Concord Mine went on strike. This strike

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lasted until May 13, 1974. The occasion for this strike had to do with the employment of certain miners at Oak Grove Mine, which had been turned over by contractors to plaintiff on May 9 upon the substantial completion of their construction work. Plaintiff offered certain skilled miners on that date work at Oak Grove Mine to commence additional developmental or preparatory work so as to ready Oak Grove Mine for regular operation. The defendant unions had sought to persuade plaintiff to treat the Oak Grove Mine as the same seniority unit as Concord Mine so as to post vacancies for filling according to seniority rules applicable to Concord Mine. The plaintiff preferred to select those employees who were willing to transfer who had the most skill for the developmental work necessary and inasmuch as the collective bargaining contract provides for measurement and application of seniority according to length of continuous service at a particular mine, it offered certain employees theretofore employed at Concord, work at the Oak Grove Mine. This action was a matter which was subject to review through the grievance and arbitration proceedings of the contract applicable to Concord Mine. The Court finds that the disagreement over manning the Oak Grove Mine was the cause or occasion of the work stoppage which began on May 9, 1974.

11. On that date plaintiff filed a motion in this action for an order to show cause directed to defendants why they should not be adjudicated in civil contempt for a violation of the November 13, 1973 Temporary Restraining Order, and jointly, severally, and in the alternative for a modification or amendment of the Temporary Restraining Order so as to make it expressly applicable to the work stoppage then in progress. This motion was presented to the Honorable Sam C. Pointer, Jr., United States District Judge, and at 2:32 P.M. on May 9, 1974 a further Temporary Restraining Order was issued restraining the strike or work stoppage then current at Concord Mine and restraining defendants from enlarging or extending that work stoppage to the Oak Grove Mine. Counsel for defendants was present at

the granting of this second Temporary Restraining Order and its provisions were promptly communicated to defendants.

12. However, the work stoppage continued after issuance and service of the second Temporary Restraining Order for the entire day of May 10 and 11, 1974. The undersigned issued an order to show cause to defendants on May 10, 1974, which order was promptly served on May 10. Nevertheless the work stoppage continued on Saturday, May 11 which was a scheduled working day. Sunday, May 12 was not a scheduled working day and on Monday, May 13, 1974 approximately two-thirds of the midnight shift returned to work and approximately 90% of the 8:00 A.M. shift at Concord Mine returned to work. The May, 1974 work stoppage resulted in a total shutdown of underground operations at Concord Mine for two and two-thirds days of scheduled work.

13. In addition to the three work stoppages referred to in the above findings, all of which the Court finds were matters coming within the broad terms of the grievance and arbitration provisions in the contract, there have been other strikes at Concord Mine during the current collective bargaining contract. There was a work stoppage on March 24, 1972 which ended March 27, 1972, only one of which days was a working day. The occasion for this strike was the death of an employee in a mine accident on March 23, 1972. There was a further strike at Concord Mine on December 19, 1972 which lasted 24 hours concerning an employee's qualifications for a vacancy. A Temporary Restraining Order restraining defendants from engaging in this strike was issued on December 20, 1972 by the Honorable Clarence Allgood, United States District Judge, Civil Action No. 72-1121, and this strike ended at 4:00 P.M. on that date. That Temporary Restraining Order was extended by consent from time to time until it was allowed to expire on February 22, 1973 by consent of the parties, it being deemed by them that the Temporary Restraining Order was no longer needed. However, within

three weeks after the expiration of this Temporary Restraining Order there were two more work stoppages at Concord Mine. The first of these began at 8:00 A.M. on March 8, 1973 and ended at 8:00 A.M. on March 9, 1973 which was occasioned by a fatal mine accident on March 7, 1973. The second of these began at 8:00 A.M. on March 12, 1973 and lasted until 4:00 P.M. on March 13, 1973 following the issuance of a Temporary Restraining Order by this Court in Civil Action No. 73-242.

14. This series of strikes over matters covered by the grievance and arbitration clause establish a pattern of conduct which creates a reasonable apprehension that such strikes will be resumed and continue unless effective injunctive relief is granted. In addition, the Court finds that a strong suggestion, if not more aptly characterized as a threat, was made to plaintiff by a member of the Executive Committee of the International Union, on May 14, 1974, that unless plaintiff made concessions to the defendants in the matter of manning the Oak Grove Mine, further work stoppages would be likely to occur; this indicating that the defendants have not relinquished economic force rather than arbitration as a means of resolving such differences.

15. The Court finds that each of these work stoppages mentioned in the above findings were in violation of the grievance and arbitration provisions of the applicable collective bargaining agreements inasmuch as the scope of those provisions applies to differences as to the meaning and application of the provisions of the collective bargaining agreement, differences over matters not mentioned in the agreement, or local trouble of any kind.

16. Each of said strikes has caused substantial injury and damage to plaintiff although the total amount of such damages is difficult of exact ascertainment. In May, 1974 there existed a nationwide fuel shortage. This shortage was made acute by the oil embargo of the petroleum exporting countries, the pollu-

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tion control regulations which resulted in increased demand for low sulphur coal, by the substitution of coal for oil in many power generation stations and by many other factors. Although prior to recent months the output of Concord Mine was used almost entirely in the Fairfield Works of plaintiff in Jefferson County, Alabama, because of critical shortages of high grade metallurgical coal in other plants of the plaintiff a considerable portion of the output of Concord Mine was in May, 1974 consigned for shipment to the plaintiff's South Works in Chicago, Illinois. The strike in May, 1974 resulted in lost production of approximately 16,000 tons of high grade metallurgical coking coal. The Court finds that said strikes have caused the plaintiff substantial and irreparable injuries for which the legal remedy is inadeqaute.

The Court finds further that based upon the above findings of fact the employer in this case would suffer more from the denial of an injunction than the union will suffer from its issuance.

On the basis of the foregoing findings, the Court makes the following

Conclusions of Law

1. Plaintiff is an employer engaged in industry affecting interstate commerce within the meaning of Section 301 of the Labor Management Relations Act, 29 U.S.C.A. § 185.

2. Defendants and each of them are labor organizations engaged in representing employees in an industry affecting commerce within the meaning of said statute.

3. Jurisdiction of this action is properly based on said statute.

4. The grievance and arbitration provisions of the collective bargaining agreement constitute an implied no-strike clause. Teamsters v. Lucas Flour Co., 369 U.S. 95, 49 LRRM 2717 (1962).

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5. The work stoppages of November, 1973 and May, 1974 constituted violations of the collective bargaining agreement. In addition these occurred in the context of a long series of other strikes in violation of the collective bargaining agreement.

6. Defendant Local Union is responsible for said work stoppages because of the active participation therein of its officers and committeemen, and all defendants are responsible therefor on the principle that a labor organization, so long as it is functioning as such, is responsible for the mass action of its employees. Steel Workers v. Vulcan Materials Co., 430 F.2d 446, 455-6, 74 LRRM 2818 (5th Cir., 1970), cert. den. 401 U.S. 963, 76 LRRM 2643 (1971), and cases cited.

7. The Court recognizes that Boys Markets, Inc. v. Retail Clerks Union, Local 70, 398 U.S. 235, 26 L.Ed.2d 199, 74 LRRM 2257 (1970), only enjoined the strike in progress at the time of the suit. However, the court in Boys Markets also adopted the dissenting opinion in Sinclair Refining Company v. Atkinson, 370 U.S. 195, 8 L.Ed.2d 440, 50 LRRM 2420 (1962), which set out when injunctive relief would be appropriate despite the Norris-LaGuardia Act. The Court feels that the language of the Sinclair dissent, as quoted by Boys Markets, 398 U.S. at 253-54, 26 L.Ed.2d at 212, 74 LRRM at 2264, is sufficiently broad to allow a prospective injunction of the type herein ordered when the tests as set out by that language are met. The Court is of the opinion that this collective bargaining agreement is so broad as to encompass any situation that could possibly arise between the parties except a good-faith walkout because of a hazard to personal safety. The Court is of the further opinion that based upon the prior practice and pattern of strikes on the part of the union, and the previous disobedience of the temporary restraining orders issued by this Court, that the only way to avoid irreparable injury to the employer in this case is to issue a prospective injunction. While this decision may seem at first glance to go further than allowed by Boys

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Markets, this Court nevertheless feels that once the tests as set down by Boys Markets are met, as is the case here, then a prohibition against future strikes is warranted, and was contemplated by the author of the Sinclair dissent (and therefore, presumably, was contemplated by the Supreme Court in Boys Markets). Why else would the Sinclair language be quoted in Boys Markets which requires the District Judge to consider "whether breaches are occurring and will continue, or have been threatened and will be committed." 398 U.S. at 253-54, 26 L.Ed.2d at 212, 74 LRRM at 2264.

And it is therefore

Ordered, Adjudged and Decreed by the Court that upon the plaintiff's filing a bond with the Clerk with good and sufficient surety approved by the Clerk in the amount of Ten Thousand Dollars ($10,000.00) and conditioned as required by Rule 65 of the Federal Rules of Civil Procedure, defendants and each of them, their officers, agents and members and all persons acting in combination or concert with any of them, or aiding and abetting them be and each of them hereby are enjoined and restrained during the pendency of this civil action until midnight, November 11, 1974, or until further order of this Court from engaging in any strike or work stoppage at plaintiff's Concord Mine, or enlarging or extending any strike or work stoppage at Concord Mine, or enlarging or extending any strike or work stoppage at Concord Mine to Oak Grove Mine over any disagreement about the interpretation or application of the collective bargaining agreement between the parties or any disagreement over any matter not mentioned in said agreement, or over local trouble of any kind, and from inducing or encouraging any of plaintiff's employees to engage in such a strike or work stoppage by word of mouth, sign, signal, vote, advice or device of any kind, or in any other manner interfering with the business of plaintiff as a means of settling any such disagreement in a manner other than set out in the collective bargaining agreement,

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provided that as a condition to the issuance of this preliminary injunction plaintiff is enjoined when requested by the defendants to handle any such dispute or disagreement under the grievance and arbitration provisions of the collective bargaining agreement. Provided, further, that the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees will not be deemed a strike under this preliminary injunction. It is further Ordered that copies of this Preliminary Injunction be served upon defendants by the United States Marshal.

United States Steel Corporation, a corp., Plaintiff,

v.

United Mine Workers of America et al., Defendants.

Civ. A. No. 73-G-1075-S.

United States District Court
N. D. Alabama, S. D.

June 17, 1974

* * * * * * *

Findings of Fact and Conclusions of Law

Guin, District Judge.

This cause came on to be heard upon the motion of the plaintiff for an adjudication that defendants District 20, United Mine Workers of America; United Mine Workers of America, Local No. 8982 are in civil contempt of this court by reason

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of their having violated and disobeyed, and continuing to violate and disobey the Preliminary Injunction issued by this court as amended on May 30, 1974* after a hearing held on May 17, 1974; and the court having on June 17, 1974 issued an order requiring defendants to show cause why they should not be adjudged in civil contempt of this court as prayed in said motion; a hearing on said order to show cause was duly held on June 17, 1974. All parties were offered full opportunity to be heard, to present evidence on the issues, to argue on the evidence and the law. The plaintiff appeared by its attorneys M. L. Taliaferro and Mark Taliaferro, Jr. and the defendants District 20; United Mine Workers of America; United Mine Workers of America, Local No. 8982 appeared by their attorney John Falkenberry. This court having duly considered the pleadings, evidence, briefs and arguments of counsel and the entire record in this case makes the following:

Findings of Fact

1. On May 30, 1974 this court issued a Preliminary Injunction as amended enjoining the defendants and each of them, their officers, agents and members and all persons acting in combination or concert with any of them, or aiding and abetting them until midnight, November 11, 1974, or until further Order of this Court from engaging in any strike or work stoppage at plaintiff's Concord Mine, or enlarging or extending any strike or work stoppage at Concord Mine to Oak Grove Mine over any disagreement about the interpretation or application of the collective bargaining agreement between the parties or any disagreement over any matter not mentioned in said agreement, or over local trouble of any kind, and from inducing or encouraging any of plaintiff's employees to engage in such a strike or work stoppage by word of mouth,

* See Appendix.

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sign, signal, vote, advice or device of any kind, or in any other manner interfering with the business of plaintiff as a means of settling any such disagreement in a manner other than set out in the collective bargaining agreement, provided that as a condition to the issuance of this Preliminary Injunction plaintiff is enjoined when requested by the defendants to handle any such dispute or disagreement under the grievance and arbitration provisions of the collective bargaining agreement.

2. The defendants have been served with said Preliminary Injunction and on the 4th day of June, 1974 have filed an appeal from said Preliminary Injunction without superceding it.

3. After the issuance of the Preliminary Injunction and while said Injunction was in full force and effect a work stoppage occurred at the plaintiff's Oak Grove Mine on Saturday, June 15, 1974 beginning at 12:01 A.M. and ending with the next shift. Plaintiff's Oak Grove Mine again struck at 12:01 A.M. and plaintiff's Concord Mine also struck at 12:01 A.M. on Monday, June 17, 1974 and said strike was continuing at both mines at the time of the hearing on said order to show cause.

4. The Court finds that a claimed memorial period had been called by the defendants and would last for 24 hours or until 12:01 A.M. on Tuesday, June 18, 1974. The Court finds that a dispute governed by the collective bargaining agreement between the parties exists concerning the right of the defendants to strike protesting the importation of South African Coal by The Southern Company.

5. The Court finds that substantially all of plaintiff's employees on the first two shifts for June 17, 1974 had failed to report to work and that said work stoppage by the defendants causes a loss to the plaintiff which exceeds Four Thousand Dollars per shift.

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6. Although the defendants contend that the motive of this strike is not covered by the collective bargaining agreement between the parties the Court finds that the defendants are attempting to circumvent its Order and are striking in violation of the collective bargaining agreement and have failed to take such action as is reasonable and appropriate to bring about compliance with this Court's Preliminary Injunction.

Conclusions of Law

1. The Preliminary Injunction was duly issued by the Court which had jurisdiction over the parties and the subject matter under 29 U.S.C.A. §185 and notice thereof was duly communicated to the defendants on or before June 4, 1974, the date their appeal was filed. The strike which began at 12:01 A.M. on June 17 and has continued through the time of the hearing in this cause is a violation of the Preliminary Injunction.

[1] 2. Defendants are responsible for said strike in violation of the Preliminary Injunction because of the authorization of the work stoppage over a dispute concerning the defendants' right to strike, protesting the importation of South African Coal by The Southern Company and because of the actual participation therein by their officers and members who are agents acting within the line and scope of their authority.

[2] 3. Issuance of an adjudication and order in civil contempt against the defendants is appropriate because of the defendants' acts herein which have been found to constitute civil contempt of this court's Preliminary Injunction.

Adjudication and Order in Civil Contempt

United States Steel Corporation, plaintiff in the above cause, having duly petitioned this Court for an order adjudicating

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defendants, District 20, United Mine Workers of America and United Mine Workers of America, Local 8982, in civil contempt of this Court by reason of disobedience of and failure and refusal to comply with the Preliminary Injunction entered by this Court on the 30th day of May, 1974; and this Court having on June 17, 1974, ordered the said defendants to appear before this Court and show cause why they should not be adjudged in civil contempt in this Court, and the matter having come on for hearing before the Court on June 17, 1974, and defendants having appeared by counsel and having been afforded the full opportunity to offer evidence and to argue on the law and the facts; and it having been determined that this Court shall make findings of fact and conclusions of law and enter such order as is warranted by the evidence before the Court; now, therefore, upon all the pleadings and proceedings heretofore had herein, it is hereby:

Ordered, adjudged and decreed that defendants, District 20, United Mine Workers of America and United Mine Workers of America, Local No. 8982, are and have been and are hereby adjudged to be, in civil contempt of this Court by reason of their disobedience of and their failure and refusal to comply with, the Preliminary Injunction issued by this Court on May 30, 1974, and it is further

Ordered, adjudged and decreed that said defendants, District 20, United Mine Workers of America and United Mine Workers of America, Local No. 8982, shall purge themselves of their said civil contempt of this Court by fully complying with all of the provisions of this Court's Preliminary Injunction issued on May 30, 1974, and it is further

Ordered, adjudged and decreed that in the event of the failure or refusal of the defendants, District 20, United Mine Workers of America and United Mine Workers of America, Local No. 8982, to comply with the purgation provisions in this order, defendants shall pay to the plaintiff a civil fine of

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Twelve Thousand Dollars ($12,000) if seventy-five percent (75%) of the members of defendant United Mine Workers of America, Local No. 8982 employed by the plaintiff at its Concord and Oak Grove Mines who are scheduled to work at 4:00 P.M. on June 17, 1974, fail to report to work; and beginning with the shift scheduled for work at 12:00 A.M. June 18, 1974, and each shift thereafter, defendants, District 20, United Mine Workers of America and United Mine Workers of America, Local No. 8982, shall pay a civil fine of Four Thousand Dollars ($4,000) per shift to the plaintiff if seventy-five percent (75%) of the members of defendant United Mine Workers of America, Local No. 8982 employed by the plaintiff at its Concord and Oak Grove Mines fail and refuse to work, and if said civil contempt continues, the Court will deal further with the imposition of such civil fines by such further means and orders as the Court shall then determine.

APPENDIX

Amended Preliminary Injunction

This cause duly came on to be heard at 1:00 P.M. on May 17, 1974 before the undersigned on the plaintiff's verified application for preliminary injunction contained in its original complaint; and upon the verified motion for further preliminary injunctive relief contained in plaintiff's motion filed on May 9, 1974, which motion the court treats as an amendment to the complaint. The plaintiff appeared by its attorneys M. L. Taliaferro and C. V. Stelzenmuller; and defendants by their attorneys Jack Drake and William E. Mitch. The Court having considered the verified complaint and the verified motion, the answer and oral testimony offered at the hearing, documentary evidence and argument of counsel, is of the opinion that the plaintiff is entitled to the preliminary injunctive relief herein granted and makes the following:

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Findings of Fact

1. Plaintiff, United States Steel Corporation, is a corporation organized and existing under the laws of the State of Delaware, and is duly qualified and authorized to do business in the State of Alabama. Plaintiff owns and operates a coal mine known as Concord Mine in Jefferson County and owns and operates other plaints and industrial facilities in Jefferson County, Alabama and in other states in which it is engaged in the production of steel, coke, chemicals and other products. Plaintiff also owns and is in the process of commencing production at a coal mine in Jefferson County, Alabama approximately 5 miles away from Concord Mine, which is known as the Oak Grove Mine. At its Concord Mine plaintiff employs over 800 persons, and at other industrial plants and facilities in Jefferson County, it employs many thousands of employees, and in its said operations in Jefferson County, Alabama plaintiff ships over $50,000 annually of goods to customers located outside the State of Alabama.

2. Defendant, United Mine Workers of America, is an unincorporated labor association having its principal office at 900 15th Street, N.W., Washington, D. C. Its duly authorized officers or agents, locals or branches, are engaged in representing or acting for employee members within this jurisdiction.

3. Defendant District 20, United Mine Workers of America, is an unincorporated labor organization and is an administrative division of the United Mine Workers of America, having an office in the City Federal Building at Second Avenue and 21st Street North, in the City of Birmingham, Alabama and is engaged in representing or acting for employee members of the United Mine Workers employed at plaintiff's Concord Mine located within this judicial district.

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4. Defendant United Mine Workers of America, Local No. 8982, is an unincorporated labor association and is affiliated with the aforesaid United Mine Workers of America, and said District 20, United Mine Workers of America. Said Local has a mailing address of Bessemer Labor Temple, 1111 North 19th Street, Bessemer, Alabama. Said Local is engaged in representing or acting for the members of the defendant United Mine Workers of America employed at plaintiff's Concord Mine located within this judicial district.

5. The plaintiff and each of defendants are parties signatory to and are bound by a collective bargaining agreement entered into between the plaintiff and the United Mine Workers of America, known and entitled "National Bituminous Coal Wage Agreement of 1971," hereinafter referred to as the collective bargaining agreement.

6. For many years defendant United Mine Workers of America has been the exclusive collective bargaining representative of certain non-supervisory employees at plaintiff's Concord Mine for the purpose of collective bargaining over wages, hours and working conditions and for many years there have been in effect collective bargaining agreements between the defendant United Mine Workers of America and the plaintiff covering approximately 767 persons employed by plaintiff at its Concord Mine. The collective bargaining agreement presently in effect and covering said employees at the Concord Mine became effective on November 12, 1971 and by its terms will continue in full force and effect until November 12, 1974, and is not subject to termination by any party to said collective bargaining agreement prior to November 12, 1974.

7. Said collective bargaining agreement dated November 12, 1971, contains a mandatory and detailed grievance and arbitration procedure for the settlement of grievances and disputes, which reads as follows:

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Should differences arise between the Mine Workers and the Employer as to the meaning and application of the provisions of this Agreement, or should differences arise about matters not specifically mentioned in this Agreement, or should any local trouble of any kind arise at the mine, an earnest effort shall be made to settle such differences at the earliest possible time . . .:

1. By the aggrieved party and his foreman who shall have the authority to settle the complaint. Any grievance which is not filed by the aggrieved party within fifteen calendar days after he reasonably should have known of such grievance shall be considered invalid and not subject to further prosecution under the grievance machinery.

2. If no agreement is reached, the grievance shall be taken up by the Mine Committee and mine management within five calendar days of the conclusion of Step 1. A standard grievance form shall be completed and jointly signed by the parties to the grievance. Such a form will be agreed upon by the parties.

3. If no agreement is reached, the grievance shall be taken up by the UMW District Representative and a designated representative of the Employer within ten calendar days of the conclusion of Step 2.

4. If no agreement is reached, the grievance shall be taken up by the Board within ten calendar days of the conclusion of Step 3, or in discharge cases, within five calendar days of notice of appeal. The Board shall consist of four members, two of whom shall be designated by the Union and two by the Employer. Neither the Union's representatives on the Board nor the Employer's representatives on the Board shall be the same persons who participated in Steps 1, 2, or 3 of this procedure.

5. Should the Board fail to agree the matter shall, within ten (10) calendar days after decision by the Board, be referred to an umpire who shall expeditiously and without delay decide said case. The decision of the umpire shall be final. Expenses and fees incident to the services of an umpire shall be paid equally by the Employer or Employers affected and by the Union.

A grievant shall have the right to be present at each step, if he so desires, of the foregoing procedures until such time as all evidence is taken.

A decision reached at any stage prior to Step 5 of the proceedings above outlined shall be reduced to writing and signed by both parties. The decision shall be binding on both parties hereto and shall not be subject to reopening except by mutual agreement.

8. At approximately 12:00 midnight on the 12th day of November, 1973, the defendants began a work stoppage at the Concord Mine. The grievance or complaint over which this work stoppage occurred was that rags were not furnished by plaintiff to some parts of the mine and that this constituted a safety hazard. The plaintiff requested the workers to go to work and said there would be plenty of rags available shortly but the employees refused to go to work and left the mine. The defendants were promptly notified that shortly after midnight rags in ample supply were placed in the mines. After such notification, however, employees scheduled to work on the 8 o'clock shift failed to report. On the midnight shift at midnight on November 12, 50 men did report and 150 scheduled to report failed to report. At 8 o'clock A.M. on November 13 ample rags were available and 4 out of 10 sections were working and 6 remained closed.

9. As shown by the records of this Court, a Temporary Restraining Order was issued restraining the continuation of said

strike at 5:43 P.M. on November 13, 1973. Defendants' counsel was immediately notified thereof and copy of the Temporary Restraining Order was promptly served on defendants. This work stoppage ended on the following midnight having lasted 24 hours.

10. The Temporary Restraining Order issued on November 13, 1973 has been duly extended from time to time and has remained in effect continually ever since. Nevertheless there have been two further work stoppages which have closed down the Concord Mine. On April 12, 1974 there was a work stoppage which lasted 24 hours. The occasion for the work stoppage was that an employee at Concord Mine who had become sick at work died while being taken to the hospital. An autopsy showed that he died of natural causes having nothing to do with his employment. On May 9, 1974 at 8:00 A.M. all the underground employees of Concord Mine went on strike. This strike lasted until May 13, 1974. The occasion for this strike had to do with the employment of certain miners at Oak Grove Mine, which had been turned over by contractors to plaintiff on May 9 upon the substantial completion of their construction work. Plaintiff offered certain skilled miners on that date work at Oak Grove Mine to commence additional developmental or preparatory work so as to ready Oak Grove Mine for regular operation. The defendant unions had sought to persuade plaintiff to treat the Oak Grove Mine as the same seniority unit as Concord Mine so as to post vacancies for filling according to seniority rules applicable to Concord Mine. The plaintiff preferred to select those employees who were willing to transfer who had the most skill for the developmental work necessary and inasmuch as the collective bargaining contract provides for measurement and application of seniority according to length of continuous service at a particular mine, it offered certain employees theretofore employed at Concord, work at the Oak Grove Mine. This action was a matter which was subject to review through the grievance and arbitration pro-

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ceedings of the contract applicable to Concord Mine. The Court finds that the disagreement over manning the Oak Grove Mine was the cause or occasion of the work stoppage which began on May 9, 1974.

11. On that date plaintiff filed a motion in this action for an order to show cause directed to defendants why they should not be adjudicated in civil contempt for a violation of the November 13, 1973 Temporary Restraining Order, and jointly, severally, and in the alternative for a modification or amendment of the Temporary Restraining Order so as to make it expressly applicable to the work stoppage then in progress. This motion was presented to the Honorable Sam C. Pointer, Jr., United States District Judge, and at 2:32 P.M. on May 9, 1974 a further Temporary Restraining Order was issued restraining the strike or work stoppage then current at Concord Mine and restraining defendants from enlarging or extending that work stoppage to the Oak Grove Mine. Counsel for defendants was present at the granting of this second Temporary Restraining Order and its provisions were promptly communicated to defendants.

12. However, the work stoppage continued after issuance and service of the second Temporary Restraining Order for the entire day of May 10 and 11, 1974. The undersigned issued an order to show cause to defendants on May 10, 1974 which order was promptly served on May 10. Nevertheless the work stoppage continued on Saturday, May 11 which was a scheduled working day. Sunday, May 12 was not a scheduled working day and on Monday, May 13, 1974 approximately two-thirds of the midnight shift returned to work and approximately 90% of the 8:00 A.M. shift at Concord Mine returned to work. The May, 1974 work stoppage resulted in a total shutdown of underground operations at Concord Mine for two and two-thirds days of scheduled work.

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13. In addition to the three work stoppages referred to in the above findings, all of which the Court finds were matters coming within the broad terms of the grievance and arbitration provisions in the contract, there have been other strikes at Concord Mine during the current collective bargaining contract: There was a work stoppage on March 24, 1972 which ended March 27, 1972, only one of which days was a working day. The occasion for this strike was the death of an employee in a mine accident on March 23, 1972. There was a further strike at Concord Mine on December 19, 1972 which lasted 24 hours concerning an employee's qualifications for a vacancy. A Temporary Restraining Order restraining defendants from engaging in this strike was issued on December 20, 1972 by the Honorable Clarence Allgood, United States District Judge, Civil Action No. 72-1121, and this strike ended at 4:00 P.M. on that date. That Temporary Restraining Order was extended by consent from time to time until it was allowed to expire on February 22, 1973 by consent of the parties, it being deemed by them that the Temporary Restraining Order was no longer needed. However, within three weeks after the expiration of this Temporary Restraining Order there were two more work stoppages at Concord Mine. The first of these began at 8:00 A.M. on March 8, 1973 and ended at 8:00 A.M. on March 9, 1973 which was occasioned by a fatal mine accident on March 7, 1973. The second of these began at 8:00 A.M. on March 12, 1973 and lasted until 4:00 P.M. on March 13, 1973 following the issuance of a Temporary Restraining Order by this Court in Civil Action No. 73-242.

14. This series of strikes over matters covered by the grievance and arbitration clause establish a pattern of conduct which creates a reasonable apprehension that such strikes will be resumed and continue unless effective injunctive relief is granted. In addition, the Court finds that a strong suggestion, if not more aptly characterized as a threat, was made to plaintiff by a member of the Executive Committee of the International Union,

on May 14, 1974, that unless plaintiff made concessions to the defendants in the matter of manning the Oak Grove Mine, further work stoppages would be likely to occur; this indicating that the defendants have not relinquished economic force rather than arbitration as a means of resolving such differences.

15. The Court finds that each of these work stoppages mentioned in the above findings were in violation of the grievance and arbitration provisions of the applicable collective bargaining agreements inasmuch as the scope of those provisions applies to differences as to the meaning and application of the provisions of the collective bargaining agreement, differences over matters not mentioned in the agreement, or local trouble of any kind.

16. Each of said strikes has caused substantial injury and damage to plaintiff although the total amount of such damages is difficult of exact ascertainment. In May, 1974 there existed a nationwide fuel shortage. This shortage was made acute by the oil embargo of the petroleum exporting countries, the pollution control regulations which resulted in increased demand for low sulphur coal, by the substitution of coal for oil in many power generation stations and by many other factors. Although prior to recent months the output of Concord Mine was used almost entirely in the Fairfield Works of plaintiff in Jefferson County, Alabama, because of critical shortages of high grade metallurgical coal in other plants of the plaintiff a considerable portion of the output of Concord Mine was in May, 1974 consigned for shipment to the plaintiff's South Works in Chicago, Illinois. The strike in May, 1974 resulted in lost production of approximately 16,000 tons of high grade metallurgical coking coal. The Court finds that said strikes have caused the plaintiff substantial and irreparable injuries for which the legal remedy is inadequate.

The Court finds further that based upon the above findings of fact the employer in this case would suffer more from the

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denial of an injunction than the union will suffer from its issuance.

On the basis of the foregoing findings, the Court makes the following

Conclusions of Law

1. Plaintiff is an employer engaged in industry affecting interstate commerce within the meaning of Section 301 of the Labor Management Relations Act, 29 U.S.C.A. § 185.

2. Defendants and each of them are labor organizations engaged in representing employees in an industry affecting commerce within the meaning of said statute.

3. Jurisdiction of this action is properly based on said statute.

4. The grievance and arbitration provisions of the collective bargaining agreement constitute an implied no-strike clause. Teamsters v. Lucas Flour Co., 369 U.S. 95, 82 S.Ct. 571, 7 L.Ed.2d 593 (1962).

5. The work stoppages of November, 1973 and May, 1974 constituted violations of the collective bargaining agreement. In addition these occurred in the context of a long series of other strikes in violation of the collective bargaining agreement.

6. Defendant Local Union is responsible for said work stoppages because of the active participation therein of its officers and committeemen, and all defendants are responsible therefor on the principle that a labor organization, so long as it is functioning as such, is responsible for the mass action of its employees. Steel Workers v. Vulcan Materials Co., 430 F.2d 446, 455-456 (5th Cir., 1970), cert. den. 401 U.S. 963, 91 S.Ct. 974, 28 L.Ed.2d 247 (1971), and cases cited.

7. The Court recognizes that Boy's Markets, Inc. v. Retail Clerks Union, Local 70, 398 U.S. 235, 90 S.Ct. 1583, 26 L. Ed.2d 199 (1970), only enjoined the strike in progress at the time of the suit. However, the court in *Boy's Markets* also adopted the dissenting opinion in Sinclair Refining Company v. Atkinson, 370 U.S. 195, 82 S.Ct. 1328, 8 L.Ed.2d 440 (1962), which set out when injunctive relief would be appropriate despite the Norris-LaGuardia Act. The Court feels that the language of the *Sinclair* dissent, as quoted by *Boy's Markets*, 398 U.S. at 253-254, 90 S.Ct. 1583, 26 L.Ed.2d at 212, is sufficiently broad to allow a prospective injunction of the type herein ordered when the tests as set out by that language are met. The Court is of the opinion that this collective bargaining agreement is so broad as to encompass any situation that could possibly arise between the parties except a good-faith walkout because of a hazard to personal safety. The Court is of the further opinion that based upon the prior practice and pattern of strikes on the part of the union, and the previous disobedience of the temporary restraining orders issued by this Court, that the only way to avoid irreparable injury to the employer in this case is to issue a prospective injunction. While this decision may seem at first glance to go further than allowed by *Boy's Markets*, this Court nevertheless feels that once the tests as set down by *Boy's Markets* are met, as is the case here, then a prohibition against future strikes is warranted, and was contemplated by the author of the *Sinclair* dissent (and therefore, presumably, was contemplated by the Supreme Court in *Boy's Markets*). Why else would the *Sinclair* language be quoted in *Boy's Markets* which requires the District Judge to consider "whether breaches are occurring and will continue, or have been threatened and will be committed." 398 U.S. at 253-254, 90 S.Ct. at 1594, 26 L.Ed.2d at 212.

And it is therefore

Ordered, adjudged and decreed by the Court that upon the plaintiff's filing a bond with the Clerk with good and sufficient

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surety approved by the Clerk in the amount of ten thousand dollars ($10,000.00) and conditioned as required by Rule 65 of the Federal Rules of Civil Procedure, defendants and each of them, their officers, agents and members and all persons acting in combination or concert with any of them, or aiding and abetting them be and each of them hereby are enjoined and restrained during the pendency of this civil action until midnight, November 11, 1974, or until further order of this Court from engaging in any strike or work stoppage at plaintiff's Concord Mine, or enlarging or extending any strike or work stoppage at Concord Mine to Oak Grove Mine over any disagreement about the interpretation or application of the collective bargaining agreement between the parties or any disagreement over any matter not mentioned in said agreement, or over local trouble of any kind, and from inducing or encouraging any of plaintiff's employees to engage in such a strike or work stoppage by word of mouth, sign, signal, vote, advice or device of any kind, or in any other manner interfering with the business of plaintiff as a means of settling any such disagreement in a manner other than set out in the collective bargaining agreement, provided that as a condition to the issuance of this preliminary injunction plaintiff is enjoined when requested by the defendants to handle any such dispute or disagreement under the grievance and arbitration provisions of the collective bargaining agreement. Provided, further, that the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees will not be deemed a strike under this preliminary injunction. It is further ordered that copies of this Preliminary Injunction be served upon defendants by the United States Marshal.

United States Steel Corporation,
Plaintiff-Appellee,

v.

United Mine Workers of America, et al.,
Defendants-Appellants,

District 20, United Mine Workers of America, and Local 892,
United Mine Workers of America, Defendants-Appellants

No. 74-2610

* * * * * * * *

Appeals from the United States District Court for the Northern District of Alabama.

Before Brown, Chief Judge, and Wisdom and Coleman, Circuit Judges.

Wisdom, Circuit Judge:

This appeal is from the issuance of a prospective *Boys Markets*[1] injunction and the later adjudication that United Mine Workers' District 20 and UMW Local 8982 were in civil contempt of the injunctive order. For some time before the issuance of the injunction in question there had been a long series of strikes over arbitrable issues. The district court, seeking to stop the steady flow of strikes, ordered the union not to strike over the current dispute or over any future dispute. The members of the local union apparently were unimpressed with the court's order. They stopped work at the Concord and Oak Groves mines in Alabama as a "memorial protest", not against United States Steel, their employer, but against the Alabama Power

[1] *Boys Markets v. Retail Clerks Union Local 770*, 1970, 398 U.S. 235, 90 S.Ct. 1583, 26 L.Ed.2d 199.

Company. The miners picketed that company for importing coal from South Africa. The district court found the union in civil contempt. *United States Steel Corp. v. UMWA*, N.D.Ala., 1974, 383 F.Supp. 1082. The union had filed its appeal of the prospective injunction before it was found in civil contempt, and now appeals both from the injunction and the contempt finding. We reverse on both issues.

I

Facts

United States Steel operates the Concord and Oak Groves mines in Alabama. The miners had walked out six times over various issues during the National Bituminous Coal Wage Agreement of 1971, up to the time of the strike that is the subject of this appeal.

In March 1972 they struck over a miner's death. The strike lasted one day. In December 1972 they struck for a day over a manning dispute. On November 12, 1973, the miners struck over the availability of rags, an issue related to safety in the mines.[2] This strike lasted for one day before it was enjoined by a temporary restraining order. This order has remained in effect by consent or perhaps because of the parties' inaction.

On April 12, 1974, a miner's death precipitated a 24-hour walkout. No judicial action was taken on this strike.

On May 9, 1974, a dispute over the filling of vacancies and seniority and transfer issues caused a strike lasting two and two-thirds days. On May 9, United States Steel made a Motion for

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[2] The matter of furnishing of rags was not an inconsequential matter for it had serious practical consequences involving a company rule against performing certain tasks without use of "rags", because to do so involved serious safety hazards and subjected the individual miners to discipline for violation of this company "rule".

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an Order to Show Cause why the union should not be held in contempt of the temporary restraining order of November 12, 1973, issued in connection with the controversy over the rags. Alternatively, the motion asked that the order of November 12 be amended expressly to cover the May 9 strike. The district court enjoined the strike on the same day. The next day, May 10, United States Steel moved for an order to show cause and the district court issued that order immediately. A hearing on a preliminary injunction was held on May 17, 1974. On May 20 the district court issued a preliminary injunction, reading in part, as follows:

> . . . defendants and each of them, their officers, agents and members and all persons acting in combination or concert with any of them, or aiding and abetting them be and each of them hereby are enjoined and restrained during the pendency of this civil action until midnight, November 11, 1974, or until further order of this Court from engaging in any strike or work stoppage at plaintiff's Concord Mine, or enlarging or extending any strike or work stoppage at Concord Mine to Oak Grove Mine *over any disagreement about the interpretation or application of the collective bargaining agreement between the parties or any disagreement over any matter not mentioned in said agreement, or over local trouble of any kind*, and from inducing or encouraging any of plaintiff's employees to engage in such a strike or work stoppage by word of mouth, sign, signal, vote, advice or device of any kind, or in any other manner interfering with the business of plaintiff as a means of settling any such disagreement in a manner other than set out in the collective bargaining agreement, provided that as a condition to the issuance of this preliminary injunction plaintiff is enjoined when requested by the defendants to handle any such dispute or disagreement under the grievance and arbitration provisions of the collective bargaining agreement. Provided, further, that the quitting of labor by

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> an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees will not be deemed a strike under this preliminary injunction.

The italicized language is taken word for word from the arbitration clause in the collective bargaining agreement.

On May 30 the district court amended the injunction by adding the following paragraph to the Conclusions of Law:

> The Court recognizes that *Boy's Markets, Inc. v. Retail Clerks Union, Local 70*, 389 U.S. 235, 90 S.Ct. 1583, 26 L.Ed.2d 199 (1970), only enjoined the strike in progress at the time of the suit. However, the court in *Boy's Markets* also adopted the dissenting opinion in *Sinclair Refining Company v. Atkinson*, 370 U.S. 195, 82 S.Ct. 1328, 8 L.Ed.2d 440 (1962), which set out when injunctive relief would be appropriate despite the Norris-LaGuardia Act. The Court feels that the language of the *Sinclair* dissent, as quoted by *Boy's Markets*, 398 U.S. at 253-54, 90 S.Ct. 1583, 26 L.Ed.2d at 212, is sufficiently broad to allow a prospective injunction of the type herein ordered when the tests as set out by that language are met. The Court is of the opinion that this collective bargaining agreement is so broad as to encompass any situation that could possibly arise between the parties except a good-faith walkout because of a hazard to personal safety. The Court is of the further opinion that based upon the prior practice and pattern of strikes on the part of the union and the previous disobedience of the temporary restraining orders issued by this Court, that the only way to avoid irreparable injury to the employer in this case is to issue a prospective injunction. While this decision may seem at first glance to go further than allowed by *Boy's Markets*, this Court nevertheless feels that once the tests as set down by *Boy's Markets* are met, as is the case here, then a prohibition against future strikes

is warranted, and was contemplated by the author of the *Sinclair* dissent (and therefore, presumably, was contemplated by the Supreme Court in *Boy's Markets*). Why else would the *Sinclair* language be quoted in *Boy's Markets* which requires the District Judge to consider 'whether breaches are occurring and will continue, or have been threatened and will be committed.' 398 U.S. at 253-54, 90 S.Ct. at 1594, 26 L.Ed.2d at 212.

The UMW district and local unions filed a timely notice of appeal on June 5, 1974.

On June 15, Lawson, president of the local, called E. J. Files, United States Steel's superintendent, to tell him that the union planned a protest over the importation of South African coal by the Alabama Power Company.[3] That Monday virtually all miners stayed off the job, and the union picketed Alabama Power's headquarters in Birmingham. The evidence is undisputed that there was no dispute between the employer and the miners. Predictably, United States Steel made a motion on the day of the strike to show cause why the union should not be held in contempt of the May 30 preliminary injunction. The district judge issued the order, held a hearing, and adjudicated the

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[3] At 9:10 A.M. on Saturday, June 15, the Company's Raw Materials General Superintendent, E. J. Files, had a phone call from Local 8982 President Lawson as follows:

Lawson: Do you know anything about Oak Grove?

Files: No, other than the men showed up on the owl shift, but went back. We will consider this as an illegal work stoppage.

Lawson: Well, they just jumped the gun. I know how you feel about this but we're going to protest Monday over South African Coal Shipments.

Files: Then Concord will be out Monday?

Lawson: Yes, but we'll be back on the owl shift Tuesday.

Files: Is this sanctioned by Mr. Miller?

Lawson: No, we couldn't get a hold of him.

union in contempt.[4] He ordered the union to purge itself of contempt or pay a $12,000 fine, if 75 percent of that day's 4:00 p. m. shift did not appear at work and $4,000 for each successive shift not 75 percent manned. The mines were fully manned by the midnight shift, but the union failed to meet the condition that the 4:00 p.m. shift be three quarters manned.

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[4] The district court's Findings of Fact and Conclusions of Law, in pertinent part, were as follows:

Findings of Fact

1. On May 30, 1974 this court issued a Preliminary Injunction as amended enjoining the defendants and each of them, their officers, agents and members and all persons acting in combination or concert with any of them, or aiding and abetting them until midnight, November 11, 1974, or until further Order of this Court from engaging in any strike or work stoppage at plaintiff's Concord Mine, or enlarging or extending any strike or work stoppage at Concord Mine to Oak Grove Mine over any disagreement about the interpretation or application of the collective bargaining agreement between the parties or any disagreement, or over any matter not mentioned in said agreement, or over local trouble of any kind, and from inducing or encouraging any of plaintiff's employees to engage in such a strike or work stoppage by word of mouth, sign signal, vote, advice or device of any kind, or in other manner interfering with the business of plaintiff as a means of settling any such disagreement in a manner other than set out in the collective bargaining agreement, provided that as a condition to the issuance of this Preliminary Injunction plaintiff is enjoined when requested by the defendants to handle any such dispute or disagreement under the grievance and arbitration provisions of the collective bargaining agreement.

* * * * * * *

3. After the issuance of the Preliminary Injunction and while said Injunction was in full force and effect a work stoppage occurred at the plaintiff's Oak Grove Mine on Saturday, June 15, 1974 beginning at 12:01 A.M. and ending with the next shift. Plaintiff's Oak Grove Mine again struck at 12:01 A.M. and plaintiff's Concord Mine also struck at 12:01 A.M. on Monday, June 17, 1974 and said strike was continuing at both mines at the time of the hearing on said order to show cause.

4. The Court finds that a claimed memorial period had been called by the defendants and would last for 24 hours or until 12:01 A.M. on Tuesday, June 18, 1974. The Court finds that a dispute governed by the collective bargaining agreement between the parties exists concerning the right of the defendants

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After a hearing on June 19, the court issued an order on June 25, finding that the union failed to purge itself of contempt. Only 45 out of 206 miners had shown up for the 4:00 p. m. shift, and the union had not attempted by telephone to notify the men to return to work. The union filed a notice of appeal on July 3, 1974.

II

Boys Markets

We start our analysis with the Norris-LaGuardia Act, 29 U.S.C. §§ 101-15, 1970, and the accommodation between it and Labor Management Relations Act (the Taft-Hartley Act)

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to strike protesting the importation of South African coal by The Southern Company.

5. The Court finds that substantially all of plaintiff's employees on the first two shifts for June 17, 1974 had failed to report to work and that said work stoppage by the defendants causes a loss to the plaintiff which exceeds Four Thousand Dollars per shift.

6. Although the defendants contend that the motive of this strike is not covered by the collective bargaining agreement between the parties the Court finds that the defendants are attempting to circumvent its Order and are striking in violation of the collective bargaining agreement and have failed to take such action as is reasonable and appropriate to bring about compliance with this Court's Preliminary Injunction.

Conclusions of Law

1. The Preliminary Injunction was duly issued by the Court which had jurisdiction over the parties and the subject matter under 29 U.S.C.A. § 185 and notice thereof was duly communicated to the defendants on or before June 4, 1974, the date their appeal was filed. The strike which began at 12:01 A.M. on June 17 and has continued through the time of the hearing in this cause is a violation of the Preliminary Injunction.

2. Defendants are responsible for said strike in violation of the Preliminary Injunction because of the authorization of the work stoppage over a dispute concerning the defendants' right to strike, protesting the importation of South African coal by

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§ 301, 29 U.S.C. § 185 (1970),[5] struck by the Supreme Court in *Boys Markets v. Retail Clerks Union Local 770*, 1970, 398 U.S. 235, 90 S.Ct. 1583, 26 L.Ed.2d 199.

The Norris-LaGuardia Act was designed to prevent federal judges from halting strikes by means of sweeping injunctions. In broad language the Act removed from federal courts jurisdiction to issue injunctions "in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute . . . from doing, whether singly or in concert, any of the following acts: (a) Ceasing or refusing to perform any work or to remain in any relation of employment . . .". Norris-LaGuardia Act § 4(a), 29 U.S.C. § 104(a) (1970). The Act established procedural safeguards in cases when injunctions were permitted. Norris-LaGuardia Act §§ 7-9, 29 U.S.C. §§ 107-09, 1970.

[1] In *Textile Workers Union v. Lincoln Mills*, 1957, 353 U.S. 448, 77 S.Ct. 912, 1 L.Ed.2d 972, the Supreme Court held that § 301 of the 1947 Taft-Hartley Act authorized federal courts to fashion a body of substantive federal labor law. The Court observed that federal law favored arbitration of labor

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The Southern Company and because of the actual participation therein by their officers and members who are agents acting within the line and scope of their authority.

3. Issuance of an adjudication and order in civil contempt against the defendants is appropriate because of the defendants' acts herein which have been found to constitute civil contempt of this court's Preliminary Injunction.

[5] Section 301(a) reads:

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

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disputes.[6] An order to the employer to arbitrate was not a prohibited injunction under the Norris-LaGuardia Act, because refusal to arbitrate was not "part and parcel of the abuse against which the Act was aimed". *Id* at 458, 77 S.Ct. at 918. Indeed, said the court, the no-strike clause was the "quid pro quo" for the arbitration clause. *Id.* at 455, 77 S.Ct. 923. In 1960 the Court handed down the Steelworkers Trilogy,[7] establishing a presumption of arbitrability of disputes, and admonishing unions and employers to arbitrate even frivolous claims.[8] At that time, usually, it was the union seeking arbitration, and the employer resisting it.[9]

The "quid pro quo" rationale of *Lincoln Mills* was extended in *Teamsters Local 174 v. Lucas Flour Company*, 1962, 369 U.S. 95, 82 S.Ct. 571, 7 L.Ed.2d 593. In that case, a suit for damages for breach of contract under § 301, the Court held that the existence of an arbitration clause implied a no-strike obligation. In *Sinclair Refining Company v. Atkinson*, 1962, 370 U.S. 195, 82 S.Ct. 1328, 8 L.Ed.2d 440, the Court held that the enforcement of arbitration clauses did not extend to injunctions against strikes in violation of no-strike obligations over arbitrable issues. Justice Brennan, in dissent, said:

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[6] *See International Ass'n of Machinists v. Cutler-Hammer, Inc.*, 271 App.Div. 917, 67 N.Y.S.2d 317, *aff'd*, 297 N.Y. 519, 74 N.E. 2d 464.

[7] *United Steelworkers v. American Mfg. Co.*, 1960, 363 U.S. 564, 80 S.Ct. 1343, 4 L.Ed.2d 1403; *United Steelworkers v. Warrior & Gulf Nav. Co.*, 1960, 363 U.S. 574, 80 S.Ct. 1347, 4 L.Ed.2d 1409; *United Steelworkers v. Enterprise Wheel & Car Corp.*, 1960, 363 U.S. 593, 80 S.Ct. 1358, 4 L.Ed.2d 1424.

[8] *Warrior & Gulf*, 363 U.S. at 582-83, 80 S.Ct. 1347; *Gateway Coal Co. v. UMWA*, 1974, 414 U.S. 368, 377-78, 94 S.Ct. 629, 38 L.Ed.2d 583.

[9] In the infancy of the labor movement arbitration was one of the central demands of labor. The famous Pullman Strike was in part over the issue of arbitration. *See* O. Fiss, Injunctions 580-612 (1970); Gould, *On Labor Injunctions, Unions, and the Judges: The Boys Markets Case*, 1970 S.Ct.Rev. 215, 217.

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> [T]he enjoining of a strike over an arbitrable grievance may be indispensable to the effective enforcement of an arbitration scheme in a collective agreement; thus the power to grant that injunctive remedy may be essential to the uncrippled performance of the Court's function under Section 301.

Id. at 216-17, 82 S.Ct. at 1340.[10] Justice Brennan's dissent formed the basis for his majority opinion in *Boys Markets* overruling *Sinclair*.

In *Boys Markets*, the Court carefully balanced two statutorily-created[11] federal policies: (1) the prohibition against injunctions in labor disputes and (2) the policy favoring enforcement of contractually created arbitration machinery for the peaceful resolution of labor disputes. The Court said:

> Our holding in the present case is a narrow one. We do not undermine the vitality of the Norris-LaGuardia Act. We deal only with the situation in which a collective bargaining contract contains a mandatory grievance adjustment or arbitration procedure. Nor does it follow from

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[10] The Norris-LaGuardia Act applies only to federal courts. *Dowd Box Co. v. Courtney*, 1962, 368 U.S. 502, 82 S.Ct. 519, 7 L.Ed.2d 483, made it clear that federal jurisdiction under § 301 was meant to supplement, not displace, state jurisdiction to enforce collective bargaining agreements. However, in *Avco Corp. v. Aero Lodge 735*, 1968, 390 U.S. 557, 88 S.Ct. 1235, 20 L.Ed.2d 126, the Court held that unions could remove state court suits to federal court, thereby in effect depriving state courts of their equitable power to grant injunctive relief. This holding precipitated a reappraisal of *Sinclair*, for, as the Court noted, Congress could not have intended to prevent state court injunctions when it passed the Taft-Hartley Act, with the purpose of extending union responsibility. *See Boys Markets*, 398 U.S. at 244-45, 90 S.Ct. 1583.

[11] The underlying rationale of *Lincoln Mills* is that Congress authorized federal courts to create a federal common law of labor. Friendly, *In Praise of Erie—and of the New Federal Common Law*, 39 N.Y.U.L.Rev. 383, 412-13 (1964). Some commentators have preferred to look upon *Lincoln Mills* and its progeny as pure federal common law. See Note, The Federal Common Law, 82 Harv. L.Rev. 1512, 1531-35 (1969).

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what we have said that injunctive relief is appropriate as a matter of course in every case of a strike over an arbitrable grievance. The dissenting opinion in *Sinclair* suggested the following principles for the guidance of the district courts in determining whether to grant injunctive relief —principles that we now adopt:

> A District Court entertaining an action under § 301 may not grant injunctive relief against concerted activity unless and until it decides that the case is one in which an injunction would be appropriate despite the Norris-LaGuardia Act. When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the contract *does* have that effect; and the employer should be ordered to arbitrate, as a condition of his obtaining an injunction against the strike. Beyond this, the District Court, must, of course, consider whether issuance of an injunction would be warranted under ordinary principles of equity—whether breaches are occurring and will continue, or have been threatened and will be committed; whether they have caused or will cause irreparable injury to the employer; and whether the employer will suffer more from the denial of an injunction than will the union from its issuance. 370 U.S. at 228, 82 S.Ct. at 1346.

Boys Markets, 398 U.S. at 253-54, 90 S.Ct. at 1594.

A reading of the opinion, together with the dissenting opinion in *Sinclair*, and academic commentary,[12] makes it clear that the purpose of *Boys Markets* was to vindicate the arbitral process.

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[12] See Gould at 219-20; 88 Harv.L.Rev. 463, 466-70 (1974); 71 Colum.L.Rev. 336, 342 (1971); Isaacson, *A Fresh Look at the Labor Injunction*, 17 Am.Inst. of Sw. Leg. Found. 231, 253 (1971)

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An open issue after *Boys Markets* was whether the presumption of arbitrability enunciated in the Trilogy applied in *Boys Markets* injunction situations. It had been argued that application of such a presumption was tantamount to a presumption of enjoinability.[13] The Third Circuit Court of Appeals, however, read the case as providing for an exception for safety disputes. In *Gateway Coal Company v. United Mine Workers*, 1974, 414 U.S. 368, 94 S.Ct. 629, 38 L.Ed.2d 583, the Supreme Court clarified *Boys Markets* by applying the presumption of arbitrability and rejecting an exception for disputes over safety.[14]

[2-4] In this circuit we have had occasion to emphasize the narrowness of *Boys Markets*. *Amstar Corp. v. Amalgamated Meat Cutters*, 5 Cir. 1972, 468 F.2d 1372, 1373-74: *Port of Houston Authority v. International Organization of Masters, Mates and Pilots*, 5 Cir. 1971, 456 F.2d 50, 53. In *Amstar* we said:

> Recognizing that under the doctrine of *Boys Markets* an injunction is permissible only if the underlying dispute 'over' which the strike has been called is arbitrable, we reverse.
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> * * * * * * * *

("[T]he decision was designed to further the right to arbitrate; it was not designed to curtail the right to strike."); Note, *The New Federal Law of Labor Injunctions*, 79 Yale L.J. 1593 (1970); Note, *Labor Injunctions, Boys Markets & the Presumption of Arbitrability*, 85 Harv.L.Rev. 636 (1972).

[13] *See* 63 Geo.L.Rev. 275, 283 (1974); 88 Harv.L.Rev. 463 (1974).

[14] *Gateway Coal* also held that the existence of an arbitration clause implied a no-strike obligation under the principles of *Teamsters Local 174 v. Lucas Flour Co.*, 1962, 369 U.S. 95, 82 S.Ct. 571, 7 L.Ed.2d 593. *Gateway Coal*, 414 U.S. at 381-82, 94 S.Ct. 629. The union does not seriously contend that the absence of a no-strike clause exempts it from the rules of *Boys Markets*.

> In attempting to accommodate '[t]he literal terms of § 4 of the Norris-LaGuardia Act . . . to the subsequently enacted provisions of § 301(2) of the Labor Management Relations Act and the purposes of arbitration,' the Supreme Court in *Boys Markets* established three prerequisites to jurisdiction in a federal district court to enjoin a strike: (1) the strike must be in breach of a no-strike obligation under an effective collective agreement, (2) the strike must be 'over' an arbitrable grievance, and (3) both parties must be contractually bound to arbitrate the underlying grievance which caused the strike.
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> * * * * * * * *
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> Were we to hold that the legality of the very strike sought to be enjoined in the present situation constituted a sufficiently arbitrable underlying dispute for a *Boys Markets* injunction to issue, it is difficult to conceive of any strike which could not be so enjoined. The *Boys Markets* holding was a 'narrow one', not intended to undermine the vitality of the anti-injunction provisions of the Norris-LaGuardia Act.

Amstar at 1372, 1374. *See New York Tel. Co. v. CWA*, 2 Cir. 1971, 445 F.2d 39, 50; *Buffalo Forge Co. v. United Steelworkers*, 2 Cir. May 1, 1975, 517 F.2d 1207; *Emery Air Freight v. Teamsters Local 295*, 2 Cir. 1971, 449 F.2d 586, 588-89; *NAPA Pittsburgh, Inc. v. Automotive Employees Local 926*, 3 Cir. 1974, 502 F.2d 321, 330-31 (en banc) (Hunter, J. and Seitz, C. J., dissenting); *Inland Steel Co. v. UMW Local 1545*, 8 Cir. 1974, 505 F.2d 293, 300-01 (Fairchild, J., dissenting).[15] With these principles in mind, we analyze the actions of the district court in this case.

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[15] The issue over which there is the most controversy in the *Boys Markets* arena, and over which there is a division in the circuits, is the refusal of sister unions to cross picket lines. In this Circuit and the Second Circuit, the striking local cannot be ordered back to work if the strike is not over an arbitrable grievance. *Amstar Corp. v. Amalgamated Meat Cutters*, 5 Cir. 1972, 486 F.2d 1372; *Buffalo*

III

The Injunction

[5, 6] It is easy to understand how a district judge, exasperated by a series of strikes over arbitrable issues and by a pattern of union disobedience of injunctive orders, would feel that a prospective final injunction against strikes over arbitrable grievances and "local trouble of any kind" was the only practicable

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Forge Co. v. United Steelworkers, 2 Cir. May 1, 1975, 517 F.2d 1207. In the Third, Fourth, Seventh, and Eighth Circuits, a union can be enjoined from honoring picket lines because an issue of contract interpretation has arisen, namely, the union's right to strike in those circumstances in light of the no-strike clause. *Island Creek Coal Co. v. UMWA*, 3 Cir. 1975, 507 F.2d 650; *Armco Steel Corp. v. UMWA*, 4 Cir. 1974, 505 F.2d 1129; *Pilot Freight Carriers v. Teamsters*, 4 Cir. 1974, 497 F.2d 311, *cert. denied*, — U.S. —, 95 S.Ct. 2665, 45 L.Ed.2d 700; *Inland Steel Co. v. UMWA*, 7 Cir. 1974, 505 F.2d 293; *Valmac Industries, Inc. v. Amalgamated Meat Cutters Local 425*, 8 Cir. July 29, 1975, 519 F.2d 263, 89 L.R.R.M. 3073; *NAPA Pittsburgh, Inc. v. Automotive Chauffeurs Local 926*, 3 Cir. 1974, 502 F.2d 321 (en banc). *But see Parade Publications, Inc. v. Philadelphia Mailers Union Local 14*, 3 Cir. 1972, 459 F.2d 369, 374; *United States Steel Corp. v. UMWA*, 3 Cir. 1972, 456 F.2d 483, 487. We reject the reasoning of these cases because it would make any strike enjoinable during the life of a collective bargaining agreement containing a no-strike clause. Such a result cannot be justified by the careful guidelines of *Boys Markets*, and would emasculate the Norris-LaGuardia Act. *See NAPA Pittsburgh* at 334 (Adams, J. dissenting); 88 Harv.L.Rev. 463 (1974) (criticizing *NAPA Pittsburgh*); *Inland Steel* at 300-01 (Fairchild, J. dissenting).

In spite of *Amstar*, the district court here found that "a dispute governed by the collective bargaining agreement between the parties exists concerning the right of the defendants to strike protesting the importation of South African coal by the Southern Company".

U. S. Steel argues that *Gateway Coal* has overruled *Amstar*. We disagree. *Gateway Coal* at most modified *Amstar*, if it can be read to say that the presumption of arbitrability did not apply in injunction cases. *See* Note, *Labor Injunctions, Boys Markets & the Presumption of Arbitrability*, 85 Harv.L.Rev. 636 (1972). Even before *Amstar*, the law in this circuit was that a dispute comes within an arbitration clause if it is "arguably arbitrable". *Southwest Bell Tel. Co. v. CWA*, 5 Cir. 1972, 454 F.2d 1333, 1336. *Gateway Coal* applied guidelines laid down in *Boys Markets;* it did not relax them. *See NAPA Pittsburgh* at 335 (Adams, J. dissenting).

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judicial solution to the problem. Here, therefore, the district judge announced from the bench that he would consider any work stoppage a violation of his order, except a good-faith walkout because of a dispute over a hazard to personal safety.[16] The state of the law, however, compels us to hold that the district court erred. (1) *Boys Markets* contemplates a finding in each case that the strike was over an arbitrable issue as a condition precedent to issuance of an injunction. (2) The injunction violated § 9 of the Norris-LaGuardia Act. (3) The injunction violated F.R.Civ.P. 65(d).

1. The district court's order of May 30 was nothing less than an injunction against striking for the life of the contract—an order to work every day. Such overbroad use of the injunction is the very evil Norris-LaGuardia sought to remedy. It is not every strike which is enjoinable under *Boys Markets*, nor even every strike over an arbitrable issue. *Boys Markets*, 389 U.S. at 253-54, 90 S.Ct. 1583; *see Anheuser-Busch, Inc. v. Teamsters Local 633*, 1 Cir. 1975, 511 F.2d 1097, 1099. The carefully drawn guidelines in *Boys Markets* clearly call for case-by-case adjudication.[17] In this case the effect of the district court's order

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[16] The Court stated:

> The Court will interpret the contract to cover *any strike whatever other than one for a valid safety reason* and will issue an injunction forbidding *any strike whatsoever* pending the trial of the case except for that one reason, except that the Court will not presume to extend its injunction past November 12, 1974. Is that when this contract expires?
>
> Mr. Stelzenmuller: Midnight, November 11.
>
> The Court: Midnight, November 11, 1974. (emphasis added).

[17] The district court sought to justify a prospective injunction by the following language in *Boys Markets*:

> [A] prohibition against future strikes is warranted, and was contemplated by the author of the *Sinclair* dissent (and, therefore presumably, was contemplated by the Supreme Court in *Boy's Markets*). Why else would the *Sinclair* language be quoted in *Boy's Markets* which requires the District Judge to consider

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is a determination that any strike would violate his order. This position forced the union to litigate the applicability of *Boys Markets* in a contempt proceeding, a situation strongly reminiscent of "government by injunction".[18]

[7] 2. We have not overlooked the fact that the order was couched in the exact words of the contract arbitration clause. Section 9 of the Norris-LaGuardia Act, however, requires that a labor injunction contain "only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court . . .". 29 U.S.C. § 109 (1970). Here, no *specific* act is complained of in the motion for the amended preliminary injunction, nor prohibited in the injunction. *See New York Telephone Co. v. CWA*, 2 Cir. 1971, 445 F.2d 39, 49-50. Such an injunction cannot stand.

3. Rule 65(d) reads as follows:

> Form and Scope of Injunction or Restraining Order.
> Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, em-

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"whether breaches are occurring and will continue, or have been threatened and will be committed."

We think that the court read too much into this language. Such findings, in almost identical words, are mandated by the Norris-LaGuardia Act before any labor injunctions may issue. Norris-LaGuardia Act § 7(a), 29 U.S.C. § 107(a) (1970).

[18] *See* Frankfurter & Greene, The Labor Injunction (1930); Statutory History of the United States: Labor Organization 161-247 (R. Koretz ed. 1970); O. Fiss, Injunctions 580-612 (1970); A. Cox & D. Bok, Labor Law 76 (7th ed. 1969).

> ployees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

The rule embodies the elementary due process requirement of notice. Developments in the Law—Injunctions, 78 Harv.L.Rev. 994, 1064-67 (1965).[19] In a pre-*Boys Markets* case, the Supreme Court was faced with the issue whether the Norris-LaGuardia Act prohibited the district court from enforcing an arbitrator's back-to-work order. In that case, when longshoremen later struck again over virtually the same issue, the district court found them in contempt of his prior order. The Supreme Court reversed, relying on Rule 65(d), because it was unclear from the order whether it applied to the second strike. The Court said:

> The judicial contempt power is a potent weapon. When it is founded upon a decree too vague to be understood, it can be a deadly one. Congress responded to that danger by requiring that a federal court frame its orders so that those who must obey them will know what the court intends to require and what it means to forbid.

Longshoremen's Ass'n, Local 1291 v. Philadelphia Marine Trade Ass'n, 1967, 389 U.S. 64, 76, 88 S.Ct. 201, 19 L.Ed.2d 236.[20]

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[19] Analytically, the broadness of an injunction refers to the range of proscribed activity, while vagueness refers the particularity with which the proscribed activity is described. Developments in the Law—Injunctions, 78 Harv.L.Rev. 994, 1064 (1965). "Vagueness" is a question of notice, i. e., procedural due process, and "broadness" is a matter of substantive law. *See* Wright & Miller, Federal Practice & Procedure § 2953 at 546-47 (1973). The district court's injunction was both overbroad (by reason of its prospectivity and vague (because it substituted nebulous contractual terms for specific acts).

[20] Professors Wright and Miller state the following rule:

> The drafting standard established by Rule 65(d) is that an ordinary person reading the court's order should be able to ascertain from the document itself exactly what conduct is proscribed.

Wright & Miller, Federal Practice & Procedure § 2955 at 536-37 (1973).

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United States Steel argues that there can be no ambiguity here because the parties' own contract language was used. A collective bargaining agreement, however, is anything but a precise document; the parties themselves are often unsure of what it means. *See* Shulman, Reason, Contract and Law in Labor Relations, 68 Harv.L.Rev. 999, 1004-05, 1007 (1955). Indeed, the special nature of the collective bargaining agreement is the very reason for the arbitration clause. *Id.*; Cox and Bok, Labor Law, 503 (7th ed. 1969).

We are aware that the technique of couching an order in the language of the labor contract has been sanctioned in *Old Ben Coal Co. v. UMW Local 1487*, 7 Cir. 1974, 500 F.2d 950, and *C. F. & I. Coal Co. v. UMW*, 10 Cir. 1974, 507 F.2d 170.[21] Those courts hold that *any* strike in violation of a no-strike clause raises an issue of contract interpretation, namely, whether the

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[21] In *Old Ben Coal Co. v. UMW Local 1487*, 7 Cir. 1972, 457 F.2d 162, the court narrowed a prospective injunction to the dispute at hand, but warned the union that continued strikes could result in a broader decree. After eight more strikes, the court, in *Old Ben Coal Co. v. UMW Local 1487*, 7 Cir. 1974, 500 F.2d 950, affirmed a prospective injunction couched in terms of the contractual arbitration clause, in light of the history of that case in the court. *Id.* at 953. In *C.F.&I. Coal Co. v. UMWA*, 10 Cir. 1974, 507 F.2d 170, 176-77, the court held that a history of strikes similar to those occurring in Alabama demonstrated an "unlawful proclivity" to strike, justifying an injunction against striking for the life of the contract, also tracking the arbitration clause. The court relied on cases involving regulatory injunctions procured by administrative agencies, *see NLRB v. Express Publishing Co.*, 1941, 312 U.S. 426, 61 S.Ct. 693, 85 L.Ed. 930, and *McComb v. Jacksonville Paper Co.*, 1949, 336 U.S. 187, 69 S.Ct. 497, 93 L.Ed. 599. The crucial difference, as we see it, between those cases and *Boys Markets* cases is that the former are public law cases, illustrating the broader authority accorded administrative agencies in their effort to enforce administrative schemes of regulation. *See* Developments in the Law—Injunctions, 78 Harv.L.Rev. 994, 1065 (1965). It must be remembered that a § 301 suit is a private contract action. *Sinclair* at 458 (Brennan, J. dissenting). While the public welfare is a consideration in whether an injunction should issue at all, *see* Wright & Miller, Federal Practice & Procedure § 2948 at 457 (1973), the traditional requirements of specificity and the public policy of Norris-LaGuardia still apply to labor injunctions.

strike violates the no-strike clause, and is therefore arbitrable. In this circuit, on the other hand, under *Amstar*, the *strike itself* is not an arbitrable issue invoking the equitable powers of the court under *Boys Markets*. *Buffalo Forge Co. v. United Steelworkers*, 2 Cir. 1975, 517 F.2d 1207 [1975] is in agreement with *Amstar*. There the court aptly said "if a strike not seeking redress of any grievance is enjoinable, then the policy of Norris-LaGuardia is virtually obliterated." *Id.* at 1207.

IV

The Strike Issue

[8] Applying the principles of *Boys Markets*, and giving full play to the presumption of arbitrability (Gateway at 379-80; *Southwest Bell Tel. Co. v. CWA*, 5 Cir. 1972, 454 F.2d 1333, 1336-37) as well as the extraordinarily broad arbitration clause in this contract, we conclude that the strike was not over an arbitrable issue. *Boys Markets* made it clear that an order to arbitrate directed at both parties goes hand in hand with the injunction. *Boys Markets*, 389 U.S. at 254, 90 S.Ct. 1583. It is beyond belief that the parties intended to arbitrate the question whether Alabama Power Company should import South African coal. United States Steel is correct when it states in its brief that this strike was in the nature of a political strike, more prevalent in Europe than in the United States. The record discloses that the miners' action was not aimed at United States Steel at all, but rather at the national policy of this country's permitting the importation of South African coal.[22] The black miners employed

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[22] Nonetheless the concerted refusal to work in this case is clearly a strike. *See* Taft-Hartley Act § 501(2), 29 U.S.C. § 142(2) (1970):

> The term "strike" includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

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by United States Steel may have been motivated by opposition to South Africa's racial policies. White and black miners may have been motivated by resentment against the importation of coal produced by cheap labor. There is no intimation in the record that the strike was really aimed at United States Steel,[23] nor that the South African coal issue was subterfuge.[24] The court is clearly empowered to pierce the parties' own characterization of their dispute—there was no occasion to do so here.

The miners' "memorial protest" in this case cannot be dragged into the shelter of "local trouble of any kind". That is the catch-all phrase used in the bargaining agreement as part of the definition of an arbitrable grievance. We construe this phrase to refer to a "local" as opposed to a "national" dispute. In any event, however, the "trouble" must be related to a grievance arising from the employment relationship between the company affected by the work stoppage and the striking employees. In this case the nature of the "trouble" is unarbitrable—except, perhaps, by the Secretary of Labor, the Secretary of State, the President, and the Congress.

In reality, the Company asks this Court to focus on *its* grievance with the union, that is, the union's frequent, blatant, irresponsible disregard of its contractual no-strike obligation.

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[23] This case was argued on a *Boys Markets* theory. We note that United States Steel has a remedy for a secondary boycott through an NLRB § 10(*l*) injunction, 29 U.S.C. § 160(*j*) (1970), or a Taft-Hartley § 303 damage suit. *See* NLRA § 8(b)(4), 29 U.S.C. § 158(b)(4) (1970).

[24] It is true that the district court, in its Findings of Fact accompanying the adjudication of contempt on June 17, 1974, said that "the defendants are attempting to circumvent its Order, and are striking in violation of the collective bargaining agreement . . ." Read in context, this does not amount to a finding that the union was using the South African coal issue as a pretext. This is so because in the preliminary injunction the court enjoined all strikes whatever during the life of the contract, and any strike would "circumvent its Order."

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Under the *Boys Markets* guidelines, however, we must focus on the union's grievance, for the evil remedied in *Boys Markets* was substitution by the union of economic weapons for arbitration in its effort to force the employer to respond to its demands. *Boys Markets*, 389 U.S. at 208-09, 90 S.Ct. 1583; *see NAPA Pittsburgh, Inc. v. Automotive Employees Local 926*, 3 Cir. 1974, 502 F.2d 321, 325-26 (Hunter, J. and Seitz, C. J., dissenting). Every company official testifying at the hearing said that there was no dispute between the union and United States Steel.

The company remains free to arbitrate the issue of the violation of the no-strike clause, and this Court will enforce an arbitrator's back-to-work order. *New Orleans Steamship Ass'n v. General Longshoreworkers Local 1418*, 5 Cir. 1968, 389 F.2d 369; *see Boys Markets*, 389 U.S. at 244 n. 10, 90 S.Ct. 1583; Gould, *On Labor Injunctions, Unions and the Judge: The Boys Markets Case*, 1970, S.Ct. Rev. 215, 244; 71 Colum.L. Rev. 336, 343-44 (1971). It is the employer, in this instance, who seeks to avoid arbitration in favor of the injunction remedy. *NAPA* at 328; *Gould* at 246.

[9-11] An employer may discipline its work force for failure to work. We are sympathetic to the company's plight, for we have no doubt that such discipline would precipitate further strikes (in that case over an arbitrable issue). In light of the Norris-LaGuardia Act and the careful accommodation struck by *Boys Markets*, this Court cannot discipline the employees through contempt proceedings. The rule remains: federal courts do not enjoin strikes, and, as Justice Brennan stated in his *Sinclair* dissent, "there is no general federal anti-strike policy". *Sinclair* at 225. It is true that there is a trend toward judicial intervention in labor disputes, but that trend has not progressed to the point where we can enjoin this kind of strike.[25] We

[25] An overview of American labor law from the early days of Norris-LaGuardia to *Gateway Coal* reveals a careful and gradual

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realize fully that our decision provides scant comfort to United States Steel, to similar companies, and to responsible union officials plagued by wildcat strikes. But we are compelled to suggest that the problem is one for Congress, not for the courts.

V

Contempt

[12] We hold that the district court was without jurisdiction to issue the injunction of May 30. The union was adjudicated in civil contempt of that order, and the rule is that disobedience of a void preliminary injunction does not carry civil contempt

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trend toward judicial enforcement of collective bargaining agreements like ordinary contracts. But courts have been reluctant to extend the injunctive remedy for historical reasons, and for the practical reason that an injunction must be enforced, if need be, by force. Our labor law places a high priority on avoidance of civil strife, Taft-Hartley Act § 1(b), 29 U.S.C. § 141(b) (1970); NLRA § 1, 29 U.S.C. § 151 (1970), and this includes strife between labor and the government. *See* A. Cox & D. Bok, Labor Law 76 (7th ed. 1969). How far courts can go in making collective bargaining agreements specifically enforceable in their entirety depends in large part on how much judicial intervention labor is willing to accept without resistance. This is a policy judgment best left to Congress.

For an interesting comparative discussion of the unique nature of the collective bargaining agreement, and its varying levels of enforceability as a contract in Europe see Kahn-Freund, Pacta Saunt Servanda—*A Principle & Its Limits*: *Some Thoughts Prompted by Comparative Labour Law*, 48 Tulane L.Rev. 894 (1974). Professor Otto Kahn-Freund writes:

> It is perhaps to be regretted that labour lawyers do not often show an interest in comparative law, and even more that few comparative lawyers pay much attention to labour law. All comparative lawyers share a concern in the scope of contractual obligations in the organisation of society. The law of collective labour relations demonstrates that the boundary between *nudum pactum* and enforceable contract, between social and legal sanctions, is not only, as everyone knows, variable in time, but also variable in space. This simple insight may perhaps deprive some current discussions of their pathos and their moralising flavour.

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penalties. *United States v. United Mine Workers*, 1947, 330 U.S. 258, 294-95, 67 S.Ct. 677, 91 L.Ed. 584; *Emery Air Freight Corp. v. Local 295*, 2 Cir. 1971, 449 F.2d 586, 592; *Bethlehem Mining Company v. UMW*, 3 Cir. 1973, 476 F.2d 860, 865; Developments in the Law—Injunctions, 78 Harv.L.Rev. 994, 1080 (1965). Accordingly, the civil fine must be set aside.

Reversed and remanded.

United States Steel Corporation,
Plaintiff-Appellee,

v.

United Mine Workers of America et al.,
Defendants-Appellants,

District 20, United Mine Workers of America; and Local 892, United Mine Workers of America, Defendants-Appellants

No. 74-2610

United States Court of Appeals
Fifth Circuit

Jan. 26, 1976

* * * * * * * *

Labor Relations Key 876

An injunction against a strike is permissible only if the underlying dispute over which the strike is called is arbitrable.

* * * * * * * *

Appeals from the United States District Court for the Northern District of Alabama.

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On Petition for Rehearing and Petition for Rehearing En Banc
(Opinion Sept. 24, 1975, 5 Cir. 1975, 519 F.2d 1236)

Before Brown, Chief Judge, Wisdom and Coleman, Circuit Judges.

Per Curiam:

In this Circuit "an injunction [against a strike] is permissible only if the underlying dispute 'over' which the strike [is] called is arbitrable". *Amstar v. Amalgamated Meat Cutters*, 5 Cir. 1972, 468 F.2d 1372. The petition for rehearing is denied without prejudice to the petitioner to renew its petition for rehearing, should the United States Supreme Court hold that the existence of a strike is itself an arbitrable issue. See *Buffalo Forge Co. v. United Steelworkers of America*, 2 Cir. 1975, 517 F.2d 1207, cert. granted, — U.S. —, 96 S.Ct. 214, 46 L.Ed.2d 139 (Oct. 20, 1975).

The Petition for Rehearing is denied and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12), the Petition for Rehearing En Banc is denied.

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Supreme Court, U. S.
FILED
MAY 26 1976
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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-1562

UNITED STATES STEEL CORPORATION,
Petitioner,

v.

UNITED MINE WORKERS OF AMERICA; DISTRICT 20, UNITED MINE WORKERS OF AMERICA; and LOCAL 8982, UNITED MINE WORKERS OF AMERICA,
Respondents

Brief of Respondents in Opposition to the Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BLEED THROU

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	1
STATEMENT OF THE CASE	2
A. The Preliminary Injunction	2
B. The Civil Contempt Order	5
C. The Court of Appeals Decision	7
REASONS FOR DENYING THE WRIT	8
I. THE CHALLENGED INJUNCTION WAS INTERLOCUTORY IN NATURE	8
II. THERE IS NO CONFLICT OF DECISION	8
III. THE COURT OF APPEALS DECISION IS SUSTAINABLE ON UNCHALLENGED ALTERNATIVE GROUNDS	11
IV. THE COURT OF APPEALS DECISION IS CLEARLY CORRECT	12
CONCLUSION	16

TABLE OF AUTHORITIES CITED

Cases

	Page
American Construction Co. v. *Jacksonville T. & K. W. Ry. Co.*, 148 U.S. 372 (1893)	8
Anheuser-Busch, Inc. v. *Teamsters Local 633*, 511 F.2d 1097 (1st Cir. 1975), *cert. denied*, 423 U.S. 875	14
Barnes & Tucker Co. v. *UMWA*, 338 F.Supp. 924 (W.D. Pa. 1972)	12
Boys Markets, Inc. v. *Retail Clerks Local 770*, 398 U.S. 235 (1970)	7, 13-15

IROUGH POOR COPY

Page

Brotherhood of Locomotive Firemen v. *Bangor & Aroostook R.R. Co.*, 389 U.S. 329 (1967) 8

CF&I Steel Co. v. *UMWA Local 9856*, 507 F.2d 170 (10th Cir. 1974) 9-10, 13, 15

Cobbledick v. *United States*, 309 U.S. 323 (1940) 8

Detroit Newspaper Publishers Ass'n v. *Detroit Typographical Union No. 18*, 471 F.2d 872 (6th Cir. 1972), *cert. denied*, 411 U.S. 967 (1973) 14

Freeman Coal Mining Corp. v. *UMWA District 12*, 500 F.2d 1405 (7th Cir. 1974) 10

G. & C. Merriam Co. v. *Saalfield*, 241 U.S. 22 (1916) 12

Gateway Coal Co. v. *UMWA*, 466 F.2d 1157 (1972), *rev'd* 414 U.S. 368 (1974) 5

Gateway Coal Co. v. *UMWA*, 414 U.S. 368 (1974) 5, 12

Hamilton Brown Shoe Co. v. *Wolf Brothers & Co.*, 240 U.S. 251 (1916) 8

Industrial Bank of Washington v. *Tobriner*, 132 U.S. App. D.C. 51, 405 F.2d 1371 (1968) 10

International Longshoremen's Ass'n v. *Philadelphia Marine Trade Ass'n*, 389 U.S. 64 (1967) 16

Lewis v. *Benedict Coal Corp.*, 259 F.2d 346 (6th Cir. 1958), *aff'd equally divided*, 361 U.S. 459 (1960) 13

Old Ben Coal Co. v. *UMWA Local 1487*, 500 F.2d 950 (7th Cir. 1974) 9, 10

Peggs Run Coal Co. v. *UMWA District 5*, 85 LRRM 2161 (3d Cir. 1973), *aff'd equally divided en banc*, 500 F.2d 4400 (1974) 13

Pittsburgh Pressmen's Union No. 9 v. *Pittsburgh Press Co.*, 479 F.2d 607 (3d Cir. 1973) 14

Public Service Commission of Wisconsin v. *Wisconsin Telephone Co.*, 289 U.S. 67 (1933) 10

Page

Pughsley v. *3750 Lake Shore Drive Cooperative Building*, 463 F.2d 1055 (7th Cir. 1972) 10

Schmidt v. *Lessard*, 414 U.S. 473 (1974) 15, 16

The Monrosa v. *Carbon Black Export, Inc.*, 359 U.S. 180 (1959) 12

U.S. Steel Corp. v. *UMWA*, — F.2d —, 91 LRRM 3031 (3d Cir. 1976) 10-11, 15

U.S. Steel Corp. v. *UMWA*, 394 F.Supp. 345 (W.D. Pa. 1975), *on remand from* 414 U.S. 1150 (1974) 5

Statutes and Regulations

Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. §801, *et seq.*

Section 104(a) (30 U.S.C. §814(a)) 9

Section 109(b) (30 U.S.C. §819(b)) 9

Section 109(c) (30 U.S.C. §819(c)) 9

Labor-Management Relations Act of 1947, 29 U.S.C. §141 *et seq.*

Section 502 (29 U.S.C. §143) 12

National Labor Relations Act, 29 U.S.C. §151 *et seq.*

Section 7 (29 U.S.C. §157) 14

Norris-LaGuardia Act, 29 U.S.C. §101 *et seq.*

Section 4 (29 U.S.C. §104) 13

Section 9 (29 U.S.C. §109) 7

Federal Rules of Civil Procedure

Rule 65 ..... 15, 16

Miscellaneous

Wright & Miller, *11 Federal Practice and Procedure: Civil* (1973) 10

BLEED THROUGH

IN THE

Supreme Court of the United States

October Term, 1975

No. 75-1562

UNITED STATES STEEL CORPORATION,

Petitioner,

v.

UNITED MINE WORKERS OF AMERICA; DISTRICT 20, UNITED MINE WORKERS OF AMERICA; and LOCAL 8982, UNITED MINE WORKERS OF AMERICA,

Respondents

Brief of Respondents in Opposition to the Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

The respondents, United Mine Workers of America ("UMWA"); District 20, United Mine Workers of America; and Local 8982, United Mine Workers of America, oppose the Petition for a Writ of Certiorari.

QUESTION PRESENTED FOR REVIEW

Did the Court of Appeals err in holding that a *preliminary* Boys Markets injunction was too broad where it went far beyond the work stoppage giving rise to the employer's complaint, as well as the dispute underlying it, to prohibit the unions who represented the striking employees from engaging in any work stoppages in violation of the applicable collective bargaining agreement for the life of that agreement?

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STATEMENT OF THE CASE

This is a petition for review of a decision of the United States Court of Appeals for the Fifth Circuit (per Brown, C.J., and Wisdom and Coleman, JJ.), reversing two orders entered by the United States District Court for the Northern District of Alabama, J. Foy Guin, Jr., J. One of the district court orders had granted a preliminary injunction against all three of the respondent unions; the other found respondents District 20 and Local 8982 in civil contempt of that injunction. Petitioner United States Steel Corporation ("Steel") seeks review so that this Court might "revise"[1] the decision of the Court of Appeals.

The petitioner is the nation's largest producer of steel, and is the owner and operator of numerous coal mines throughout the country, including the Concord Mine in Jefferson County, Alabama. Respondent UMWA is an international labor organization headquartered in Washington, D.C., and is the collective bargaining representative of the great majority of this nation's coal miners, including the approximately 800 miners employed at the Concord Mine. Respondent District 20 is an autonomous intermediate labor organization whose territorial jurisdiction consists of all parts of the State of Alabama, including the Concord Mine; respondent Local 8982 is the local union representing UMWA members at the Concord Mine.

A. The Preliminary Injunction

This litigation began on November 13, 1973, when petitioner Steel filed a suit for injunctive relief and damages against the three respondent unions in the District Court. Steel alleged that a work stoppage had begun at the Concord Mine at 12:01 a.m. that morning over a safety dispute that was arbitrable under the terms of the collective bargaining agreement there in force, the National Bituminous

[1] Petition at 14 (conclusion).

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Coal Wage Agreement of 1971 ("the 1971 Agreement"). According to the complaint, only 50 of 200 miners had reported to work on the 12:01-8:00 a.m. shift, and only 40 per cent of the workforce had reported at 8:00 a.m. The complaint also alleged that there had been two other "strikes" over arbitrable issues since November 12, 1971, the date the 1971 Agreement became effective. The District Court granted a temporary restraining order at 5:43 p.m. that afternoon, finding that there was "a strike in violation of the collective bargaining agreement," and ordering the respondents' members, as well as the respondents themselves, to cease "from engaging in a strike or work stoppage at plaintiffs Concord Mine or continuing to engage in said work stoppage." By midnight that night, everyone was back to work. However, the temporary restraining order was continued in force pending further hearings.

This litigation then remained inactive for nearly six months, until Thursday, May 9, 1974, when petitioner Steel filed a motion alleging that approximately 90 per cent of the Concord miners on that morning's 8:00 a.m. shift had refused to work over an arbitrable job bidding dispute. Steel's motion asked that all three of the respondents be held in civil contempt of the earlier temporary restraining order, or alternatively, that the earlier order be amended to "expressly" cover the new dispute. The District Court chose to amend the restraining order, and issued its amended order at 2:32 p.m. on the afternoon of May 9. A show cause order was issued the following day (Friday) against respondents District 20 and Local 8982, and the mine returned to work at 12:01 a.m. on Monday, May 13.

The following week, on May 17, 1974, the District Court held a hearing on a preliminary injunction. And on May 30, 1974, a preliminary injunction was granted against all three of the respondents, based upon "the verified complaint and the verified motion, the answer and oral testimony of-

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fered at the hearing, documentary evidence and argument of counsel." That injunction, however, was not limited to a prohibition against revival of the November 12 and May 9 work stoppages pending a final hearing on the merits. Instead, the district court issued a much broader decree, incorporating verbatim the words of the collective bargaining agreement's arbitration clause, to prohibit the three respondent unions from stopping work:

> "over any disagreement about the interpretation or application of the collective bargaining agreement between the parties or any disagreement not mentioned in said agreement, or over local trouble of any kind."

This "preliminary" injunction was to remain in effect "during the pendency of this civil action until midnight, November 11, 1974"—the date the 1971 Agreement was to and did expire.

In support of its decree, the district court found that for purposes of temporary relief, there had been seven (7) short "strikes" over arbitrable disputes during the 2½ year life of the 1971 Agreement. Three of these alleged "strikes" had not been mentioned in either Steel's complaint or its motion to amend the temporary restraining order (which the District Court considered as an amendment to the complaint), and were alleged for the first time at the preliminary injunction hearing. With respect to each of these three, Steel claimed at hearing that when no one reported for work during the 24 hours[2] following a death at the mine, there somehow was a "strike," and that that "strike" was somehow over an arbitrable dispute. With respect to the other four "strikes" alleged, the District Court found that

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[2] Steel's Statement of the Case alleges (Petition at 5) that a "strike" following a "3/24/72" fatality had lasted "72" hours. But the District Court found that work had only stopped for "a working day." (Petition at A24)

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there had been two work stoppages over arbitrable job bidding disputes lasting 24 (December 1972) and 64 (May 1974) hours, and two over arbitrable safety disputes[3] lasting 32 (March 1973) and 24 hours (November 1973).[4] In addition, the District Court indicated its belief that the arbitration clause of the 1971 Agreement was "so broad as to encompass any situation that could possibly arise *between the parties* [emphasis added] except a good-faith walkout because of a hazard to personal safety."[5] Timely notices of appeal were filed by the three respondents.

B. The Civil Contempt Order

Approximately three weeks after issuance of the preliminary injunction, on June 17, 1974, the District Court found that respondents District 20 and Local 8982 were in civil contempt. On June 17, miners across Alabama ceased their

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[3] See the Petition at A30, n. 2, for the Court of Appeals discussion of the safety aspects of the November 1973 dispute.

[4] On July 18, 1972, the Third Circuit had held that the 1968 UMWA Agreement "should not be construed as providing for compulsory arbitration of safety disputes." *Gateway Coal Co.* v. *UMWA*, 466 F.2d 1157, 1160. Its decision was later reversed by this Court, but not until January 8, 1974, or after the two safety stoppages herein. *Gateway Coal Co.* v. *UMWA*, 414 U.S. 368. Thus, at the time of the two safety stoppages herein, the applicable case law told the Concord miners they had a right to stop work over safety disputes.

[5] But see the Petition at 13, para. 2, where Steel now argues that its employees' grievances with it were arbitrable under the 1971 Agreement, but that Steel's grievances with its employees were not. See also *U.S. Steel Corp.* v. *UMWA*, 394 F.Supp. 345 (W.D. Pa. 1975), *on remand from* 414 U.S. 1150 (1974), where at Steel's urging a district court held exactly that.

In reality, the 1971 Agreement specifically provided that disputes which were "national in character" were to be settled by "free collective bargaining" rather than arbitration (Article XX), that "prior practice and custom not in conflict" with the Agreement was to continue (Article XIX, section (b)), and that the UMWA International could designate a total of up to ten working days as non-working "memorial periods" (Article XVI, section (k)).

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work for one day, and converged upon Birmingham to picket the stockholders' meeting of the Southern Corporation, in protest of Southern's importation of South African coal for use by its Alabama Power Company subsidiary. As Steel admitted, and as the Court of Appeals found (Petition at A47-A48), the miners' action was aimed "at the national policy of this country's permitting the importation of South African coal," and was not aimed at Steel. Nevertheless, the District Court found that while the miners had not ceased work because of any dispute with Steel, their stopping of work had aggrieved Steel, and thereby created an arbitrable dispute over the question of whether the miners had a right to stop work to engage in their protest. Therefore, said the Court, the miners had no right to stop work and engage in their protest until after Steel's alleged grievance[7] had been resolved through arbitration.

Of course, the miners had *not* stopped work "over" the question the District Court found to be arbitrable—the question of whether they had a right to stop work to protest the importation of South African coal. They had stopped work "over" the question of whether South African coal should be imported, *not* "over" the question of whether they had a right to stop work.

The District Court's civil contempt order was issued on the very morning of the South African coal protest (June 17), and stated that unless the miners ceased their protest and returned to work by 4:00 p.m. that afternoon, District 20 and Local 8982 would be fined $12,000. Forty-seven (47) of 219 employees reported on the 4:00 p.m. shift, and the entire midnight shift reported, but the District Court imposed the full $12,000 fine anyway. District 20 and Local 8982 filed timely notices of appeal.

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[7] Steel never filed a contract grievance. Indeed, Steel now declares that it had no right to do so. See note 5 *supra*.

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C. The Court of Appeals Decision

As previously noted, the Court of Appeals for the Fifth Circuit reversed both the preliminary injunction order and the civil contempt order on appeal. To use the Court of Appeals' own words, the District Court's preliminary injunction was invalid because it

> "was both overbroad (by reason of its prospectivity) and vague (because it substituted nebulous contractual terms for specific acts)."

(Petition at A45, n. 19) The contempt order was likewise invalid, both because "a void preliminary injunction does not carry civil contempt penalties" (Petition at A50-A51), and because the South African coal stoppage "was not over an arbitrable issue" (Petition at A47).

More specifically, the Court of Appeals held that the breadth of the preliminary injunction conflicted with this Court's holding in *Boys Markets, Inc.* v. *Retail Clerks Local 770,* 398 U.S. 235 (1970). The Court of Appeals observed that this Court had taken great pains to make it clear that "not every strike . . . is enjoinable under *Boys Markets,* nor even every strike over an arbitrable issue." It then held that district courts cannot issue injunctions prohibiting work stoppages over future disputes that have not yet arisen, because they will not know whether such stoppages will be enjoinable until when and if they do occur. The Court noted that if such injunctions were allowed, unions would be forced "to litigate the applicability of *Boys Markets* in a contempt proceeding, a situation strongly reminiscent of 'government by injunction'." (Petition at A43-A44) The Court further noted that Section 9 of the Norris-LaGuardia Act, 29 U.S.C. §109, requires that labor injunctions prohibit only the "specific act or acts" the employer or union is complaining of. (Petition at A43-A44)

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REASONS FOR DENYING THE WRIT

Petitioner Steel asks this Court to review the question of whether the district court could issue "a prospective injunction" on the facts of this case. (Petition at 2, 1. 28-30) The requested writ should be denied for the following reasons:

I. THE CHALLENGED INJUNCTION WAS INTERLOCUTORY IN NATURE

Petitioner Steel asks this Court to review a Court of Appeals order vacating a preliminary injunction—a temporary injunction issued pending a final hearing on the merits of petitioner's allegations. But an order vacating a nonfinal judgment is rarely a proper matter for this Court to review, and no rare factor requiring special review is even alleged here. As this Court stated in *American Construction Co.* v. *Jacksonville, T. & K.W. Ry. Co.*, 148 U.S. 372, 384 (1893), no writ of certiorari should issue "to review a decree of [a] circuit court of appeals on appeal from an interlocutory order, unless necessary to prevent extraordinary inconvenience and embarrassment in the conduct of the case."[8] See *Brotherhood of Locomotive Firemen* v. *Bangor & Aroostook R.R. Co.*, 389 U.S. 327, 328 (1967); *Cobbledick* v. *United States*, 309 U.S. 323, 324-25 (1940); *Hamilton Brown Shoe Co.* v. *Wolf Brothers & Co.*, 240 U.S. 251, 257-58 (1916).

II. THERE IS NO CONFLICT OF DECISION

Petitioner Steel errs in asserting that the decision below conflicts with decisions of the Third, Seventh, and Tenth Circuits. The question considered below was that of the permissible scope of a *preliminary* Boys Markets injunction. However, Steel cites Seventh and Tenth Circuit decisions

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[8] It should be noted that the 1971 Agreement expired on November 12, 1974, and that any sort of injunctive relief to enforce it is therefore no longer appropriate. The only question still outstanding is that of damages.

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dealing with the permissible scope of a *permanent* Boys Markets injunction—an injunction issued after a final hearing on the merits, after a defendant has had an opportunity to make full use of discovery procedures, and after the defendant has otherwise been able to prepare its full defense.[9] See *Old Ben Coal Co.* v. *UMWA Local 1487*, 500 F.2d 950, 951 (7th Cir., Aug. 2, 1974); and *CF&I Steel Co.* v.

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[9] If the respondent unions had been able to prepare a complete defense before the preliminary injunction hearing herein, the results in the District Court might well have been different.

For example, the respondents did not know prior to hearing that Steel planned to allege that there were "strikes" whenever the miners did not report for work during the 24 hours following a death in the mine. If they had known, the respondents could have shown that since time immemorial, coal mines have traditionally been closed for a 24 hour mourning period following a death, and that a failure to report for work when the mine is closed can hardly be called a "strike."

Furthermore, the respondents could also have shown that during two of the three mourning periods involved in this case, parts of the Concord Mine were closed by "imminent danger" orders issued by federal mine inspectors under section 104(a) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. §814(a). See Bureau of Mines Order No. 1-JB (issued March 23, 1972, at 10:15 a.m., and terminated at 7:30 a.m. on March 24, 1972) and Bureau of Mines Order No. 3-D.O.M. (issued March 7, 1973, at 12:15 p.m., partially modified at 3:05 p.m. on March 8, and terminated at 8:00 a.m. on March 15). If Steel had tried to operate despite those orders, it and its supervisors would have been guilty of a federal crime punishable by a fine of up to $25,000, imprisonment for up to a year, or both. 30 U.S.C. §§819(b) & (c).

Because allegations like these were advanced in the aftermath of *Boys Markets*, the current collective bargaining agreement between Steel and the UMWA, the National Bituminous Coal Wage Agreement of 1974, includes an express provision stating (Article XXII, section (k)):

> "work shall cease at any mine on any shift during which a fatal accident occurs, and the mine shall remain closed on all succeeding shifts until the starting time of the next regularly scheduled work of the shift on which the fatality occurred."

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UMWA Local 9856, 507 F.2d 170, 172 (10th Cir. 1974). In fact, in *Freeman Coal Mining Corp.* v. *UMWA District 12,* 500 F.2d 1405 (7th Cir., July 31, 1974), a preliminary injunction as broad as that herein was "affirmed," but remanded with instructions that its scope be narrowed to deal only with the work stoppage giving rise to the employer's complaint, by the same Seventh Circuit panel that was to decide *Old Ben* just two days later.[10] The differences between preliminary and permanent relief are well known,[11] and require rejection of Steel's claim of decisional conflict with *Old Ben* and *CF&I.*[12]

Nor can it be said that there is decisional conflict with the Third Circuit's recent decision in *U.S. Steel Corp.* v. *UMWA,* —F.2d—, 91 LRRM 3031 (March 16, 1976, as amended April 6, 1976). The Third Circuit did deal with a broad preliminary injunction in its *U.S. Steel* case, but it vacated that injunction in its entirety and remanded, hold-

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[10] The *Freeman* decision was issued as an unpublished order under Seventh Circuit Rule 28, which authorizes unpublished orders and provides that such orders are not to be cited as precedents within the Circuit.

[11] Preliminary relief is, of course, designed solely to preserve the status quo pending a final decision on the merits. Accordingly, "different standards of proof and of preparation may apply to the emergency hearing as opposed to the full trial." *Pughsley* v. *3750 Lake Shore Drive Cooperative Building,* 463 F.2d 1055, 1057 (7th Cir. 1972) (per Stevens, J.). To obtain a preliminary injunction, a plaintiff "need not show that he is certain to win." Wright and Miller, *11 Federal Practice and Procedure: Civil,* §2948, at 452 (1973). "While the probability of success on the merits is a factor to be considered on a motion for preliminary injunction, such an application 'does not involve a final determination of the merits', but rather 'the exercise of a sound judicial discretion on the need for interim relief.'" *Industrial Bank of Washington* v. *Tobriner,* 132 U.S. App. D.C. 51, 54, 405 F.2d 1321, 1324 (1968), citing *Public Service Commission of Wisconsin* v. *Wisconsin Telephone Co.,* 289 U.S. 67, 70-71 (1933).

[12] In any event, the injunctive decree approved in *CF&I* was much narrower than that issued by the District Court here. See 507 F.2d at 171, 173.

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ing that "the evidence" before the district court did not "warrant" relief going beyond the work stoppage giving rise to the litigation.[13] 91 LRRM at 3042, 3045-46. "[T]he injunction was both overbroad and insufficiently specific." 91 LRRM at 3043. In short, the Third Circuit has never affirmed an order granting a Boys Markets injunction, preliminary or permanent, of the scope of the preliminary injunction vacated by the Fifth Circuit herein.

III. THE COURT OF APPEALS DECISION IS SUSTAINABLE ON UNCHALLENGED ALTERNATIVE GROUNDS

Petitioner Steel only seeks review of that part of the Court of Appeals' decision holding that a preliminary "prospective injunction" could not be issued on the facts herein. (Petition at 2, 1. 28-30) However, the Court of Appeals set aside the preliminary injunction not only because of its holding that the preliminary injunction was too broad, but also because of its holding that the injunction was too "vague." (Petition at A45, n. 19; see also *U.S. Steel Corp.* v. *UMWA*, 91 LRRM 3031, 3042 n. 18 (3d Cir. 1976))

Similarly, the Court of Appeals found that the civil contempt order was not only void because the underlying injunction was too broad, but also because the underlying injunction was too vague, and because the dispute over Southern Corporation's importation of South African coal was not arbitrable.[14] (Petition at A47-A50)

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[13] In separate opinions, each of the three members of the *U.S. Steel* panel indicated, in *dicta*, their feelings about so-called "prospective" Boys Markets injunctions. And all differed. Compare Judge Gibbons' opinion at 91 LRRM 3042-3043, Judge Rosenn's opinion at 91 LRRM 3045-3047, and Chief Judge Seitz' opinion at 91 LRRM 3048.

[14] Steel concedes that the arbitrability of the South African coal protest relates "to the contempt adjudication only," and "therefore" has "nothing to do with the question presented herein." (Petition at 6, n. 1)

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Thus, even if this Court were to find that a preliminary "prospective injunction" could have been issued on the facts of this case, the Court of Appeals decision would have to be affirmed on other, unchallenged, grounds. This Court does not grant certiorari to review questions posed so abstractly. *The Monrosa* v. *Carbon Black Export, Inc.*, 359 U.S. 180, 183-184 (1959).

IV. THE COURT OF APPEALS DECISION IS CLEARLY CORRECT

1. Petitioner argues that the decision below was in error. But most of the petitioner's argument is irrelevant, for it deals with what can happen in a situation where a district court has found that an arbitration clause applies to "any dispute" arising during the life of a collective bargaining agreement, and where a district court has entered such a finding in a judgment entitled to res judicata effect in subsequent litigation. (Petition at 10-12) Here, on the other hand, there is no judgment entitled to res judicata effect, as the district court issued nothing more than an interlocutory injunction.[15]

Nor did the district court find, even preliminarily, that "any dispute" was arbitrable under the 1971 Agreement. The preliminary injunction merely reiterated the words of the arbitration clause, and the district court's opinion indicated a belief that the arbitration clause only applied to disputes "between the parties,"[16] and did not prohibit "a good faith walkout because of a hazard to personal safety."[17]

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[15] See *G.&C. Merriam Co.* v. *Saalfield*, 241 U.S. 22, 28 (1916) ("[I]t is familiar law that only a final judgment is res judicata as between the parties.").

[16] See also the Court of Appeals' decision at Petition A47-A48, and *Barnes & Tucker Co.* v. *UMWA*, 338 F.Supp. 924, 927 (W.D. Pa. 1972) (dispute between UMWA members and the UMWA International not arbitrable under 1971 Agreement).

[17] See 29 U.S.C. §143; *Gateway Coal Co.* v. *UMWA*, 414 U.S. 368, 385 (1974).

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(Petition at A10, para. 7) Furthermore, Steel now contends that its grievances with its employees were not arbitrable,[18] and the 1971 Agreement itself excluded disputes "national in character" from arbitration.[19]

2. It is clear that the Court of Appeals' decision is totally correct standing by itself, quite apart from petitioner's inability to mount any relevant attack upon it. In *Boys Markets, Inc.* v. *Retail Clerks Local 770*, 398 U.S. 235, 253 (1970), this Court created what was termed a "narrow" exception to §4 of the Norris-LaGuardia Act, 29 U.S.C. §104, which prohibits federal district courts from enjoining strikes growing out of labor disputes. Specifically, this Court held that injunctive relief would be appropriate where a strike is "over a grievance which both parties are contractually bound to arbitrate," provided that an injunction would also "be warranted under ordinary principles of equity." This Court held that a district court cannot issue such an injunction "until it first holds" that a collective bargaining agreement requires arbitration of a dispute causing a strike, and until the court has been able to "consider whether issuance of an injunction would be warranted" under normal equity principles. 398 U.S. at 253-54.

Clearly, the Court of Appeals did not err in obeying this Court's *Boys Markets* command, and holding that a district court cannot enjoin a strike over an allegedly arbitrable dispute "until it first holds" that all of the *Boys Markets* criteria for such relief are met. That is, before it can issue a Boys Markets injunction, a district court must first deter-

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[18] Petition at 13, para. 2; see n. 5 & 7 *supra*.

[19] See n. 5 *supra*; *CF&I Steel Corp.* v. *UMWA Local 9856*, 507 F.2d 170, 173 n. 9 (10th Cir. 1974); *Lewis* v. *Benedict Coal Corp.*, 259 F.2d 346, 351 (6th Cir. 1958) (per Stewart, J.), *aff'd equally divided*, 361 U.S. 459 (1960). See also *Peggs Run Coal Co.* v. *UMWA District* 5, 85 LRRM 2161 (3d Cir. 1973) (panel), *aff'd equally divided en banc*, 500 F.2d 1400 (1974) (5-5).

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mine that a work stoppage is in fact "over" the dispute the employer alleges that it is over, that the actual dispute is an arbitrable one, and that the normal prerequisites for equitable relief are met. A given work stoppage may not be enjoinable because the employer lacks "clean hands," because of an absence of irreparable harm, because the alleged underlying dispute is not arbitrable, or because the stoppage is not "over" the alleged underlying dispute at all.[20] As the Court of Appeals succinctly put it,

> "It is not every strike which is enjoinable under Boys Markets, nor even every strike over an arbitrable issue."

(Petition at A43)

Obviously, then, an injunction against "all strikes" or "all strikes over arbitrable disputes" is overbroad, even where a district court completely and correctly describes the scope of the arbitration clause, as it prohibits federally protected activity[21] that is simply unenjoinable. Furthermore, as the Court of Appeals noted, an order of that scope requires a defendant union charged with violation of such an order "to litigate the applicability of *Boys Markets* in a contempt proceeding, a situation strongly reminiscent of 'government by injunction'." (Petition at A44)

All of this is not to say that res judicata is inapplicable in *Boys Markets* litigation. (See Petition at 11) Where, unlike here, an employer has obtained a final judgment finding that a particular dispute is arbitrable, nothing in *Boys Markets* prevents that judgment from being given res

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[20] See, *e.g.*, *Anheuser-Busch, Inc.* v. *Teamsters Local 633*, 511 F.2d 1097, 1099-1100 (1st Cir. 1975), *cert. denied*, 423 U.S. 875; *Detroit Newspaper Publishers Ass'n* v. *Detroit Typographical Union No. 18*, 471 F.2d 872, 875 (6th Cir. 1972), *cert. denied*, 411 U.S. 967 (1973); *Pittsburgh Pressmen's Union No. 9* v. *Pittsburgh Press Co.*, 479 F.2d 607, 609-10 (3rd Cir. 1973).

[21] 29 U.S.C. §157.

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judicata effect in subsequent litigation between the same parties arising during the remaining life of the collective bargaining agreement. But before the employer is able to obtain a subsequent injunction, the employer should still have to prove that a subsequent work stoppage is truly "over" a dispute of the kind that has been found to be arbitrable, and that the normal prerequisites for equitable relief have been met. The employer should still have to have "clean hands," and should still have to be suffering irreparable injury.

3. Alternatively, the Court of Appeals' decision is correct because the injunction below was unlawfully vague. As the Court of Appeals found, the District Court merely transplanted language from the collective bargaining agreement to the injunction, and

> "A collective bargaining agreement . . . is nothing but a precise document: the parties themselves are often unsure of what it means. Indeed, the special nature of the collective bargaining agreement is the very reason for the arbitration clause."

(Petition at A46) See *CF&I Steel Corp.* v. *UMWA Local 9856,* 507 F.2d 170, 173 incl. n. 8 (10th Cir. 1974); see also *Schmidt* v. *Lessard,* 414 U.S. 473, 476 (1974); and Rule 65(d) of the Federal Rules of Civil Procedure.

Furthermore, the injunction herein did not indicate whether it was meant to enshrine the District Court's views of the scope of the contractual arbitration clause as enforceable without further inquiry, or whether future contempt defendants could exhonorate themselves by convincing the District Court—or a Court of Appeals—that its initial views were erroneous. See also *U.S. Steel Corp.* v. *UMWA,* 91 LRRM 3031, 3042-43 (3d Cir. 1976) (discussing other vagueness difficulties likewise presented here).

This Court has held that the injunctive specificity re-

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quirements of Civil Rule 65(d) "are no mere technical requirements," and that injunction "defendants [are] never to be left to guess at what they are forbidden to do." *Schmidt* v. *Lessard*, 414 U.S. 473, 476 (1974); *International Longshoremen's Ass'n* v. *Philadelphia Marine Trade Ass'n*, 389 U.S. 64, 75 (1967). Yet the respondents here were left to do exactly that.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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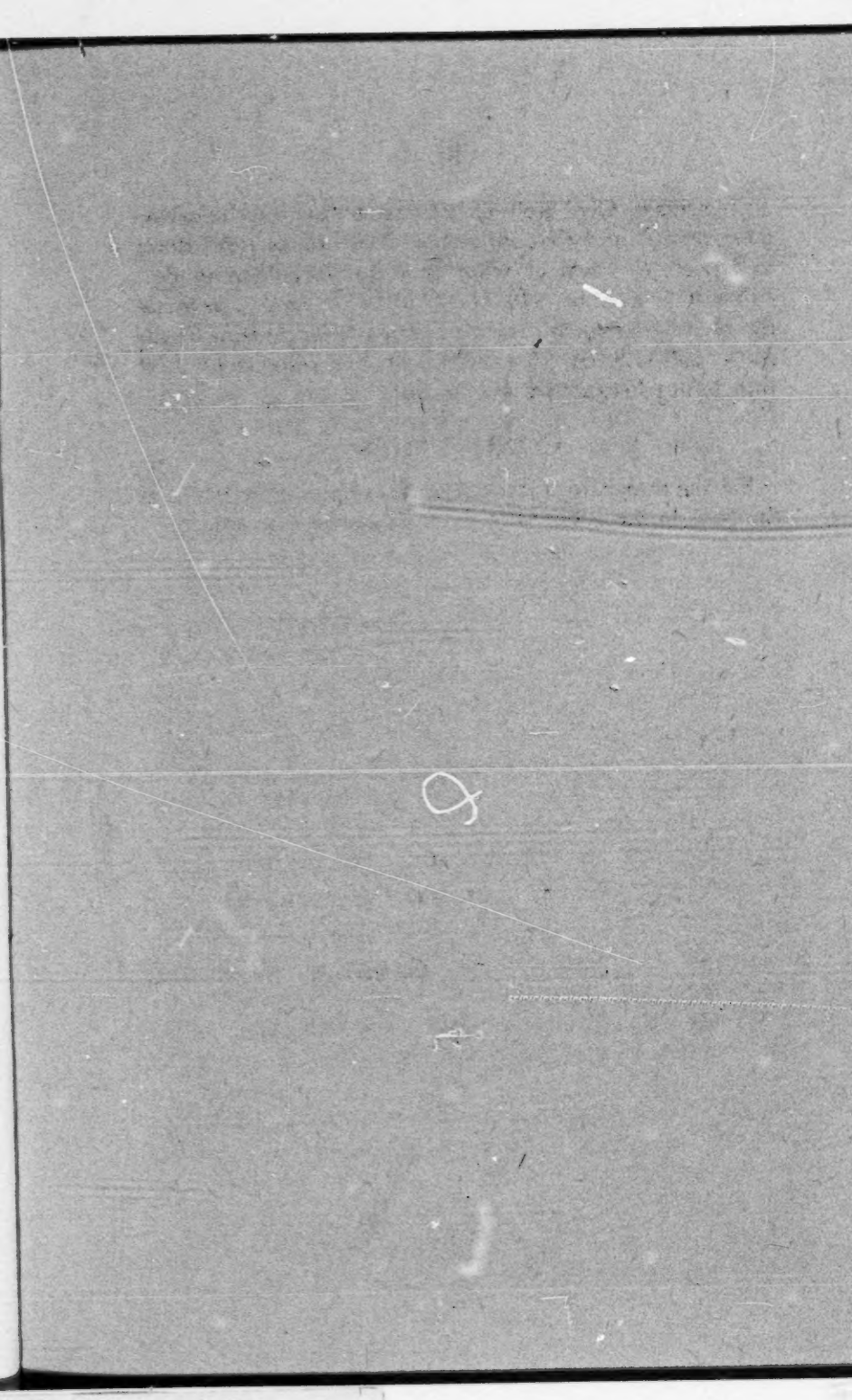

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-1562

UNITED STATES STEEL CORPORATION,
Plaintiff-Petitioner,

v.

UNITED MINE WORKERS OF AMERICA, DISTRICT 20, UNITED MINE WORKERS OF AMERICA, and LOCAL 8982, UNITED MINE WORKERS OF AMERICA,
Defendants-Respondents.

REPLY BRIEF OF PETITIONER

In Support of Its Petition for Certiorari to the United States Court of Appeals for the Fifth Circuit

We have read the Brief of Respondents in Opposition to the Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit. Their contention that there is no conflict among the Circuits on the question presented for review herein is clearly insubstantial. Their contention that the interlocutory character of the injunction herein somehow makes the case unsuitable for review by this Court appears to make much ado about nothing in the present context, in view of the

fact that *Boys Markets* itself, 398 U.S. 235 (1970), also arose upon an interlocutory injunction. Consequently, we believe no detailed reply is necessary, and that it suffices to call this Court's attention to the Opinion Sur Petition for Rehearing in Banc and Order of the United States Court of Appeals for the Third Circuit, in *United States Steel Corporation v. United Mine Workers of America, et al.*, — F. 2d — (May 20, 1976), denying rehearing in the case reported at 91 LRRM 3031, 78 LC ¶ 11,347 (March 19, 1976):

> "*Opinion Sur Petition for Rehearing in Banc*
>
> "Present: Seitz, *Chief Judge*, Van Dusen, Aldisert, Adams, Gibbons, Rosenn, Hunter, Weis and Garth, *Circuit Judges*
>
> "For Publication
>
> "(Filed May 20, 1976)
>
> "Per Curiam
>
> "We have before us a petition by the defendant unions for rehearing in banc. The issues involved in this case are exceptionally important and controversial. On some of them the panel members divided three ways, and the several courts of appeals which have considered these issues have divided at least three ways as well.[1] Clearly, the subject matter is such that in banc consideration ordinarily would be appropriate. Whatever this court sitting in banc decided, however, the difference among the circuits would remain with respect to the application of the federal law of labor arbitration to the same national labor contract. Only the Supreme Court is in position to resolve this con-

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[1] *See, e.g., United States Steel Corp. v. United Mine Workers of America*, 519 F. 2d 1236 (5th Cir. 1975), *petition for cert. filed*, 44 U.S.L.W. 3626 (U.S. April 26, 1976) (No. 75-1562); *CF&I Steel Corp. v. United Mine Workers of America*, 507 F. 2d 170 (10th Cir. 1974); *Old Ben Coal Corp. v. Local 1487, UMW*, 500 F. 2d 950 (7th Cir. 1974).

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flict. A petition for certiorari has already been filed seeking review of the decision of the Fifth Circuit in *United States Steel Corp. v. United Mine Workers of America*, 519 F. 2d 1236 (5th Cir. 1975), *petition for cert. filed*, 44 U.S.L.W. 3626 (U.S. April 26, 1976) (No. 75-1562). If certiorari should be granted in that case, the Supreme Court should be in a position to simultaneously consider this case involving the same collective bargaining agreement. Rehearing in banc might prevent and certainly would delay such consideration. The issue of injunctive relief with respect to future violations of implied no strike agreements is of such importance that we prefer to take no step that might delay a petition for certiorari.

"The petition for rehearing in banc will be denied."

* * * * * * * *

"Sur Petition for Rehearing

"Present: Seitz, *Chief Judge*, Van Dusen, Aldisert, Adams, Gibbons, Rosenn, Hunter, Weis and Garth, *Circuit Judges*

"The petition for rehearing filed by Appellants in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied."

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CONCLUSION

The writ of certiorari should be granted to review the "exceptionally important and controversial" question presented in the instant case, and to resolve the conflict among the Circuits on that question.

Respectfully submitted

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Certificate of Service

I hereby certify that I have served a copy of the foregoing Reply Brief on each of the following by mailing a copy to each by U. S. Mail, properly addressed, postage prepaid on this the 31st day of May, 1976:

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